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# NOTHING HAPPENS EVERYDAY

## AN ETHNOGRAPHIC STUDY OF THE EVERYDAY IN A LOWER COURT IN MUMBAI

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Sonal Makhija

Doctoral dissertation, to be presented for public examination with the permission of the Faculty of Law, University of Helsinki, in Päärakennus Auditorium XIV, University main building, on 26<sup>th</sup> April 2019, at 12 o'clock.

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Cover photo: Mumbai promenade with people sitting facing the sea. Photo taken by Rono Chakravarty.

Nothing happens everyday:

An ethnographic study of the everyday in a lower court in Mumbai

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To my father,  
and  
to Bombay – a city where a lot happens

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## Abstract

*Nothing Happens Everyday* is an ethnographic study of the everyday in a lower court. The everyday in court was described by the women court users in my study as a spatio-temporal site where ‘nothing happens’. Thus, this is an ethnographic study of the ordinary and ‘unperceivable’ of everyday in a lower court in Northern Mumbai, India. Drawing on Maurice Blanchot’s work on the everyday, this nine-month ethnographic study of the everyday, of ‘empty-time’, of the discomfort, dreariness and boredom of sitting and waiting, follows the lives of women who encounter the Protection of Women from Domestic Violence Act, 2005, and examines how women perceive and ‘make sense’ of the law and everyday procedures. “Nothing happens in courtrooms. We only sit there all day,” was how women described their everyday encounter with the law, as everyday felt the same. The description of the everyday as unremarkable and as it is encountered in its quotidian moment is an analytical thread followed throughout this thesis, and I examine the perception of ‘nothing happens’ in light of the lived experience of the everyday through an embodied approach.

The study argues that the examination of the routine and everyday experience of law sheds light on the disparity between what the law promises and what the law delivers, and what women seek from the law when they come before it. Thus, this study is a detailed exploration of what happens in the everyday in courts. What happens to those who come before it? How do women ‘reach’ the law, and why does the law remain out of reach? By focusing on everyday interactions and waiting, the project reveals law’s everyday inaccessibility, alienation, and the everyday possibilities.

# Chapter One

## Introduction

The everyday is platitude (what lags and falls back, the residual life with which our trash cans and cemeteries are filled: scrap and refuse); but this banality is also what is most important, if it brings us back to existence in its very spontaneity and as it is lived-in the moment when, lived, it escapes every speculative formulation, perhaps all coherence, all regularity.

Everyday Speech, Maurice Blanchot<sup>1</sup>

This thesis is about the everyday of law. The *everyday in law* and the *everyday of law* was described by the women litigants in my study as a site where ‘nothing happens’. Thus, this thesis is an ethnographic study of the ordinary<sup>2</sup> and ‘unperceivable’ of the everyday law in a lower court in Northern Mumbai,<sup>3</sup> India. More specifically, I focus on the everyday encounter with the Protection of Women from Domestic Violence Act, 2005 (hereafter referred to as the Domestic Violence Law or Act) in a lower court in Mumbai, and how women litigants using the Domestic Violence Act perceive and ‘make sense’ of the law in the everyday context. “Nothing happens in courtrooms. We only sit there all day,” was the characteristic description of women litigants’ experience with the law, and everyday felt the same. That ‘nothing happens’ in courts is an analytical thread I follow throughout this thesis. From the perspective of the women court users, the feeling that

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<sup>1</sup> Maurice Blanchot and Susan Hanson, “Everyday Speech,” *Yale French Studies*, no. 73 (1987): 12–20, <https://doi.org/10.2307/2930194>.

<sup>2</sup> Scholars have differentiated between the ordinary and the everyday, arguing that the everyday refers to that which is repeated in succession, as opposed to the ordinary which is uneventful, but does not necessarily occur every day. For more, see Lorraine Sim, *Ordinary Matters: Modernist Women’s Literature and Photography* (Bloomsbury Publishing USA, 2016).

<sup>3</sup> In order to maintain my informants’ anonymity, the Magistrate court I studied and the specific ‘courtrooms’ I situated myself in for the period of my fieldwork, will be referred to generically as ‘the lower court’ and the geographical location of lower court as in Northern Mumbai. I will not identify the exact geographical location of the court or identify the court I studied.

nothing happens in courts relates to the disparity between what the law promises and what the law delivers, and this further differs from what women seek in court. Precisely, this study follows what happens to the legislative promises and guarantees of the Domestic Violence Act in everyday application, and in the adjudicatory site of the lower court where the Act is applied. By this I do not mean how the Act is being implemented, nor is this a legal analysis on the effectiveness of the Act, or its impact or how appellate judgements are interpreted. Rather, based on an ethnographic study of a Metropolitan Magistrate Court<sup>4</sup> in Mumbai I examine the inevitable interaction between the everyday and the law, and how women litigants in my study experienced the adjudicatory process of seeking relief in court. The study was conducted for a period of nine months in three phases (January 2014 to March 2014, followed by the next phase from August 2014 to December 2014, and the third phase in August 2015).

The Domestic Violence Act was drafted with the objective of filling the gap in civil law, that is, a law that provides civil remedies to women in violent relationships, such as, economic relief, the right to reside in a home shared with the perpetrator or an alternative accommodation, compensation orders, and orders to stop violence immediately.<sup>5</sup> In opposition to criminal law, which focuses on penalising the wrong doer, the civil Act focuses on civil remedies to help women move out of violent homes, as women are in most cases economically dependent on violent relationships and often have no alternative home in which to seek shelter. Moreover, unlike a civil law, a criminal provision that sends the husband and his family to jail, completely breaks-down the possibility of reconciliation that women often hope for in cases where women use the law as a mode of intervention and stopping violence. This is related to the nature of

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<sup>4</sup> The Metropolitan Magistrate Courts are typically referred to as Police Courts and are the lowest courts on the criminal side. They were established under Section 16 of the Code of Criminal Procedure 1973. At present, 75 Metropolitan Courts are sanctioned according to the Indian e-courts website. These courts are situated in 16 court complexes spread across Mumbai. For more, see “History | Official Website of District Court Of India,” <http://ecourts.gov.in/mumbai/cmm>.

<sup>5</sup> For more on the objective and history of the Domestic Violence Act, see Indira Jaising, “Bringing Rights Home: Review of the Campaign for a Law on Domestic Violence,” *Economic and Political Weekly* 44 (31 October 2009): 50-57, <https://doi.org/10.2307/25663733>.

civil law since, as opposed to criminal law under a civil Act, the dispute is between two parties and concerns the failure to fulfil certain duties and obligations. The dispute is filed for redressal of civil reliefs, like monetary relief, residence orders, or compensation for the emotional, mental or physical violence caused. The Domestic Violence Act grants women in all kinds of relationships the right to seek relief under the Act, including married women, women in live-in relationships, and sisters and daughters who may be victims of violence. Thus, the Act ensures that women can seek reliefs irrespective of the status of their relationships.

The objective of the Act was to provide quick reliefs to help women escape violent relationships without necessarily breaking-down the marriage. This included interim orders and a summary trial<sup>6</sup> that ensured a hearing date was fixed within three days of the application and the final reliefs granted within sixty days of the application. Quick reliefs in the form of interim relief were considered critical under the Act since civil reliefs under personal laws were often delayed.<sup>7</sup> Moreover, interim reliefs like the right to reside in an accommodation that may be shared with the perpetrator, or providing an alternative accommodation, along with protection orders and directing the perpetrator to stay away from the shared home, can be sought, thus providing women an escape from violent relationships while the court case continues. Economic rights in the form of interim monetary relief were seen as key to ensure that women are not left destitute after filing the Act against the perpetrator. Additionally, it is the first law that named and defined 'domestic violence', and it provides for a wide definition of what constitutes domestic violence, thus taking cognizance of the nature and depth of violence that women can suffer. This includes both acts of omission, or commission, or conduct meted out by the 'respondent' or the perpetrator that is physical and mental abuse, sexual abuse, verbal and emotional abuse, or economic abuse. The definition of the

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<sup>6</sup> The purpose of a summary trial is to ensure a speedy trial and quick disposal of a case without compromising on the principles of a fair trial. Procedure with respect to a summary trial is provided in the Code of Civil Procedure, 1908. Under the Domestic Violence Act, the Magistrate has discretionary powers to direct a summary procedure.

<sup>7</sup> By personal laws I refer to community-based laws that govern matters relating to marriage, dissolution of marriage, custody, adoption and inheritance in a particular community, that is, Hindus, Muslims, Christians, Parsis, and Jews.

respondent under the Act is any adult male who is or has been living with the woman.

My interest in the Act was to investigate whether the Act met its promise of greater accessibility and quick reliefs. What kinds of narratives were employed in seeking reliefs and did giving domestic violence a legal name change how cases were argued in courtrooms? Given the Act was modelled after the UN Model Code on Legislation to Prevent Violence Against Women,<sup>8</sup> were international human rights arguments recruited in courtrooms? My interest in studying doctrinal law in the first place was a question I became interested in while working for a non-profit organisation that monitored the ‘impact’ of the Domestic Violence Act, and how the Act was being used, to what end, and how was it implemented. The NGO that assessed the ‘implementation’ of the Domestic Violence Act played a formidable role in drafting and campaigning for the passing of the Act.<sup>9</sup> The objective of my study though was not to study the ‘implementation’ of the Act from the perspective of the kind of orders granted or reliefs sought, or how the key stakeholders implement the Act. The objective was to ethnographically map what happens to a globally influenced doctrinal state law in an adversarial, adjudicatory process in the everyday – is it transformed, or does it meet its emancipatory potential and the initial intention of its drafters? Does the focus on providing an avenue for civil remedies, by broadening the definition of domestic violence, shift the attention away from violence, and what discourses of violence should be recruited to seek a specific civil relief?

This study thus examines what happens to the law in the everyday. My main argument in this book is that access to the law is an embodied access to the law, by this I mean that ‘who’ is critical to how accessible or inaccessible the law is. This accessibility to the law is gained through the senses, and the sensory experience of the law is located in a specific gendered body. I argue that access to the law is attained through the everyday, and the everyday in turn is accessed

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<sup>8</sup> The UN Model Code provides guidelines to draft a law including detailed definitions, rights and protection that should be included in the draft law protecting women from domestic violence. For more information, see the United Nations, ed., *Handbook for Legislation on Violence against Women* (New York: United Nations, 2010).

<sup>9</sup> For more, see Lawyers Collective, “Staying Alive,” *Third Monitoring and Evaluation Report on the Protection of Women from Domestic Violence Act*, 2005.

through the senses. Thus, senses are critical to our access to the law, and this sensory access to the law is interrelated to how does the law sense and how do 'we' in turn sense the law. The embodied experience of the law reveals the unpredictable, changeable and unequal nature of established legal categories, and in this thesis I take this argument forward. When the women litigants in my study describe their access to court as 'nothing happens', they refer to the variable nature of accessibility itself, and how the promise of doctrinal law is attainable, or unattainable, differently for different users. Thus, accessibility to the law is not merely a physical, linguistic, financial access to the law, but what accessibility means and to who. It differs in what women want from the law and what the law delivers, and includes an examination of why a civil Act that provided a wide definition of what is domestic violence fails to travel into courtroom arguments and discussions on 'violence' and change how violence is spoken about. In this thesis, I specifically examine why the Act remains out of reach, and I argue that the discourse on 'access to justice' should take into consideration the unstable and varied nature of everyday access itself to address the structural inequalities. This includes how women's access to courts is determined by the kinds of narratives used in courts.

The question of access to justice cannot be responded to without taking into consideration what takes place in the everyday, and what do guarantees of a fair hearing and a reasonable length of time translate into in the everyday. By closely looking at established legal concepts of a 'hearing', a 'fair trial', and 'reasonable time', this thesis argues that hearing and listening, the perception of judicial delay and 'truth', and accessibility to the law are variant. I demonstrate how these multiple meanings unravel in the courtroom. In the first few weeks of my fieldwork, I rephrased my research questions relating to 'access' and what accessibility means in the everyday. What happens when 'what takes place' in courtrooms is inaudible to a certain section of the public, namely, the litigants, and to what extent are the senses critical to this access. How do women make 'sense' of the law and what happens in the everyday? What senses does law recruit when it 'listens', and how in turn does it control how we sense? Starting from this inaudibility, and its many meanings both architecturally, materially and phenomenologically, the focus moves to questions on accessing the law and how do we access the law through our senses. Thomas Scheffer forcefully argues that the spatial ordering in courts that positions bodies, voice and gaze is what influences performances and its reception. The court is essential to both scripting access and

co-producing narratives.<sup>10</sup> It is this that essentially makes the court accessible or not accessible, irrespective of the objective and motivation of a doctrinal law.

The question on how the law is transformed in and by the everyday lent itself to an ethnographic analysis of what happens in courtrooms. How the law is actualised in courts, and how hierarchy determines access were questions that I became interested in, specifically given the inequalities that the Domestic Violence Act sought to remedy. It is here that my interest in exploring how the Act was used in courtrooms took root in place of a mere doctrinal reading of the Act and reading lower court and appellate judgements. In this chapter, I lay down the theoretical foundations that are key in analysing and addressing the primary questions and key themes of this study. Each of the themes are further examined in more detail in the chapters that follow. I then proceed to provide an ethnographic description of the court and the spatial layout, followed by the fieldwork methodology, and the limitations and positionality of the study.

### **Why does the everyday matter?**

“Nothing happens in courtrooms. We only sit there all day,” was the characteristic description of women’s litigants experience with the law, as everyday felt the same.<sup>11</sup> This description of the law, as it is encountered in its quotidian moment is something I critically engage

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<sup>10</sup> Thomas Scheffer writes that courts are one of the co-producers of materiality, as each element from the written plaint, cross-examination, oral arguments and evidence adds to the case, and different materialities take precedence based on the nature of the case. For more, see Thomas Scheffer, “Materialities of Legal Proceedings,” *International Journal for the Semiotics of Law* 17, no. 4 (1 December 2004): 356–89, <https://doi.org/10.1007/s11196-0044958-4>.

<sup>11</sup> Henni Alava’s doctoral thesis, “‘There is Confusion’: The Politics of Silence, Fear and Hope in Catholic and Protestant Northern Uganda”, which explores confusion as an analytical thread in post-war Uganda, helped me delve further into the significance of ‘nothing happens’ and what that means from the perspective of women court users. Alava reflects on confusion and the ambivalence that she encountered in studying violence in post-war Uganda. Writing about confusion, silence and uncertainty, she emphasises the epistemological and ethical need to recognise the complexity of studying violence and its aftermath as opposed to claiming to provide clear-cut answers. For more, see Henni Alava, “‘There Is Confusion’: The Politics of Silence, Fear and Hope in Catholic and Protestant Northern Uganda”(PhD diss., University of Helsinki, 2017).

with throughout this thesis, and I draw on theoretical debates that shed light on the ‘everyday’ of the law. The everyday escapes our senses, as there is nothing to perceive and it “belongs to insignificance, and the insignificant is without truth, without reality, without secret, but perhaps also the site of all possible signification”.<sup>12</sup>

I draw on literary theorist Maurice Blanchot’s work on how it is the insignificance of the everyday that makes it significant. The women litigants I closely followed in this study, though, described the everyday in law and their interaction with law in courtrooms as ‘nothing’. ‘Nothing happens’ is a sensorial feeling of the “nullity” of the everyday, and everyday law is no different from this “tragedy of nullity”.<sup>13</sup> The everyday for Blanchot presents both the “superficial and profound, strange and familiar, insignificant and fundamental, outside praxis yet the harbinger of anarchic energies”.<sup>14</sup> It is the everyday that presents the possibility of challenging and resisting. I argue that something does ‘happen’ in courts, even though it escapes our senses – that is essentially the nature of the everyday.<sup>15</sup> It is in the repeated practices of case filing, appealing, responding and challenging that courts function. It is the succession of these activities that propels the case forward, and it is this succession that also breaks settlements and propels the closure of cases.

By the emphasis on the everyday I mean what does the everyday law look like, what does it sound like? Does it have a distinct odour and how does it taste<sup>16</sup>? What about touch? Questions on what

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<sup>12</sup> Blanchot and Hanson, “Everyday Speech,” 14.

<sup>13</sup> Blanchot and Hanson, 11.

<sup>14</sup> Writing on Blanchot’s everyday Michael Sheringham observes that for Blanchot the everyday is insignificant and yet in the everyday lies the possibility of resistance. For more, see M. Sheringham, “Attending to the Everyday: Blanchot, Lefebvre, Certeau, Perce, ” *French Studies* 54 (2000): 187–99.

<sup>15</sup> Blanchot and Hanson, “Everyday Speech.”

<sup>16</sup> Writing about taste, Pierre Bourdieu links taste to social capital where ‘a sense of taste’, as it is often referred to colloquially, is correlated to social and cultural capital. He writes: “Taste, a class culture turned into nature, that is, *embodied*, helps to shape the class body. It is an incorporated principle of classification which governs all forms of incorporation, choosing and modifying everything that the body ingests and digests and assimilates, physiologically and psychologically. It follows that the body is the most indisputable materialization of class taste.” The aesthetics of taste and our



the law looks like, or how the law appeals to the sight have been asked before. My thesis focuses on the intimate connection between how women litigants sense the law, how they make sense of it, and how the law in turn senses. By this, I argue, we come to know and understand law through our senses and how we perceive the law is intimately tied to the question of how the law senses. Can you touch the law without being touched by it? Possibly not. Our sensations are constantly in dialogue with the world around us and respond to it.

When I refer to the senses, I do not privilege one sense over another. I argue that all the senses need to be taken into consideration. By lending attention to one sense, we fail to consider how the senses work in tandem, overlap or contradict each other.<sup>17</sup> Writing on law and the senses, Hamilton et al. similarly argue that this attention to the ‘taxonomy of five senses’ does not take into consideration the ‘gut instinct’, and how senses do not work in a discrete neatly-bound way.<sup>18</sup> Senses go beyond the five senses. Sensing is also an act of making sense of what we know, and trying to understand the world. The ‘gut instinct’ that forewarns us about something bad, is more linked to the ‘stomach’ or what we may find difficult to digest as true or good. For instance, the lawyers I followed referred to a gut instinct as a kind of emotional and legal sensing. Is the legal sense then one kind of sense? A kind of sense that lawyers learn in the practice of law, raising questions like: Will this story appear believable to the court? or Is this woman telling the truth? How does this relate back to legal categories, in the case of this study specifically, how does the woman fit the category of a ‘victim’ or an ‘aggrieved woman’ defined in the Act? Or,

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judgements, according to Bourdieu, are correlated to the social, economic, and cultural capital that we acquire through practice, and these aesthetics generate a habitus that guides our choices consciously or unconsciously. Likewise, by taste I refer to the habitus that plays a role in ‘taste’ and access. For more, see Pierre Bourdieu, *Distinction: A Social Critique of the Judgement of Taste* (Harvard University Press, 1984) and Susanne Højlund, “Taste as a Social Sense: Rethinking Taste as a Cultural Activity,” *Flavour* 4 (26 February 2015): 6, <https://doi.org/10.1186/2044-7248-4-6>.

<sup>17</sup> Tim Ingold makes a similar argument that in our daily perceptual practice our senses “cooperate so closely, and with such overlap of function, that their respective contributions are impossible to tease apart.” For more, see Timothy Ingold, “Against Soundscape,” *Autumn Leaves: Sound and the Environment in Artistic Practice*, 2007, <https://abdn.pure.elsevier.com/en/publications/against-soundscape>.

<sup>18</sup>Sheryl Hamilton et al., *Sensing Law* (Taylor & Francis, 2016), 5-6.

does it ring true when held against precedents in law or does a victim of domestic violence behave like that? This everyday 'legal sensing' refers to both normative and empirical aspects<sup>19</sup> that shift attention from 'what we see' to other modes of sensing that fall outside of the five-sensory classification. The lawyers I followed during the course of my study used this 'legal sensing' to know and differentiate between 'truth' and 'falsehood' when interrogating questions of fact and what counts as 'truth'. This sensing is located in a particular body and in a particular experience.

Departing from the dualism of mind and body,<sup>20</sup> I use philosopher Maurice Merleau-Ponty's work on how a 'lived body' is essential to the 'primacy of perception'. For Merleau-Ponty the body is "the measurant (*mesurant*) of all, Nullpunkt of all the dimensions of the world".<sup>21</sup> For Merleau-Ponty, the body becomes a standard of perceiving the surroundings and the world, just as the world perceives the body, our perceptions are in relation to the body and how we make sense of the world. Writing on the use of body following Merleau-Ponty's notion of a 'mesurant', Stephen Priest writes that the measuring instrument cannot measure itself: "That which perceives does not measure itself perceiving."<sup>22</sup> The perceptual world Merleau-Ponty talks about does not exist in isolation inside our bodies, it communicates with those around us. Sensing is particular to who we are, and it resides in a particular spatio-temporality. For Merleau-Ponty, sensing is not a fact or a belief. When we sense, it is a particular sensing body that is gendered, sexed, and resides in a particular culture and class context. This sensing body is not static but is located in a particular spatio-temporality. Thus, 'who' senses is critical to our experience of how law senses. It is, as Sara Ahmed notes, this lived

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<sup>19</sup> William Twining, *Rethinking Evidence: Exploratory Essays* (Northwestern University Press, 1994).

<sup>20</sup> Describing the unity of the mind-body *habitus*, Michael Jackson writes that when people speak of 'losing their footing' or 'falling' they are not physical metaphors of the mind, instead they give "evidence of the actual experience of disoriented Being". He notes that metaphors disclose the interdependency of the mind and the body, the self and the world; they reveal unities. For more, see Michael Jackson, *Things as They Are: New Directions in Phenomenological Anthropology* (Georgetown University Press, 1996), 11.

<sup>21</sup> Maurice Merleau-Ponty, "The Visible and the Invisible," (Northwestern University Press, 1968), 248-249.

<sup>22</sup> Stephen Priest, *Merleau-Ponty* (Routledge 2002), 72.

experience that shapes bodies, gestures, dispositions or tendencies that appear to be repeated effortlessly, but are not. She adds, for Merleau-Ponty and Edmund Husserl the lived experience was ‘sedimented histories’, and for Pierre Bourdieu, it was habitus that integrated the past with the actions and perceptions.<sup>23</sup> She further adds that in the case of Judith Butler, it is in the performative inhabiting and dwelling of bodies that one witnesses the effects of social differences.<sup>24</sup> Thus, women and the law mutually constitute each other. Yet, how a law catering to women is perceived by women, as opposed to men, is different, and how a law that seeks to correct the imbalance and inequalities between men and women and invert cultural norms that favour men, is also a specific experience of the law.

Merleau-Ponty writes that the body is “the same flesh as the world”, that is, both of them perceive and are perceived, and are mutually constitutive.<sup>25</sup> For Merleau-Ponty, human beings make the world over to themselves and to others;<sup>26</sup> the phenomenological is thus an experience of the world we live in. This rejection of the dualism of mind/body, self/world, inside/outside, and the argument that the body and the world are relationally constituted, is critical to my argument on how the law senses and in turn also about how we sense the law, and who this ‘we’ is. This perception of the world is what anthropologist Paul Stoller has argued is also essential to the everyday of ethnography: we shift our attention from merely ‘observing’ to an “experience-in-the world”,<sup>27</sup> that is, a scholarly body that smells, tastes, hears, sees and where the mind/body dichotomy is dissolved.<sup>28</sup> This ‘sensing by the law’ and ‘sensing the law’ then is as

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<sup>23</sup> Sarah Ahmed, “Orientations: Toward a Queer Phenomenology,” *GLQ: A Journal of Lesbian and Gay Studies* 12, no. 4 (1 January 2006): 543–74, <https://doi.org/10.1215/10642684-2006-002>.

<sup>24</sup> Ahmed, 552.

<sup>25</sup> Merleau-Ponty, “The Visible and the Invisible.”

<sup>26</sup> Jackson, *Things as They Are*, 11.

<sup>27</sup> Paul Stoller, *Sensuous Scholarship* (University of Pennsylvania Press 1997), xi.

<sup>28</sup> For more on this embodied ethnography, see Tim Ingold, *The Perception of the Environment: Essays on Livelihood, Dwelling and Skill* (Abingdon, UK: Taylor & Francis, 2000), <https://doi.org/10.4324/9780203466025>; David Howes, “The Social Life of the Senses,” 2013, 20; David Howes, *Sensual Relations: Engaging the Senses in Culture and Social Theory* (Ann Arbor: University of Michigan Press, 2003); Sarah Pink, *Home Truths: Gender, Domestic Objects and*

much about how I sensed, as opposed to an objective account of the field that achieves insight from ‘immersion in the field’ while retaining objectivity. An ‘embodied experience’ of the field that anthropologists like Stoller have urged for, where anthropologists direct their bodies and senses for ethnographic analysis is critical to this thesis. The exploring of how law senses and how we in turn sense the law unfolds through a detailed ethnographic study of law’s everyday life in a lower court in Northern Mumbai, and from the perspective of a specific encounter with the Domestic Violence Act. The physicality, sensoriality and spatio-temporal setting of the courtroom is essential to how the law senses, how it regulates our senses, and the senses it evokes in court users.<sup>29</sup>

As I said, I was not sheltered from this sensorial experience of the court, the sense of hearing I talk about. The sluggishness with which time progressed is brought into my ethnography of the court and is likewise my experience of the court. Stoller has questioned the ‘disembodied gaze’ of the scholar where the social scientist supposedly faithfully represents ‘what is’ without the mediated gaze of ‘what he saw’. When women litigants described their interaction with everyday law as ‘nothing’ of value, their description corresponded with my field notes from the first few weeks in court, where I described frequent adjournments and ‘not much happened today’ in the courts. I worried about how I would write an ethnography of a court where cases are only adjourned without any arguments taking place, and the sheer lack of ‘procedural’ stages expected in a trial. In the first few weeks in court, ‘nothing happened’ in my perceptible gaze as a researcher expecting a trial. ‘Nothing happens in courts’ was also my initial response as I waited for something out of the ordinary to happen in court. But the ethnographic project seeks to record exactly that, the everyday.

For instance, in Jane Fajan’s study on the Baining people of Papua New Guinea the previous work on the Baining was challenged on the grounds that it was not interesting, or worthy of studying since it lacked any specific belief systems and social structures. Fajan’s ethnographic study of the everyday life of the Baining people, who placed high value on the repetitive and mundane everyday work of

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*Everyday Life* (Oxford Berg. 2004); Sarah Pink, “The Future of Sensory Anthropology/the Anthropology of the Senses: The Future of Sensory Anthropology,” *Social Anthropology* 18, no. 3 (16 August 2010): 331–33, [https://doi.org/10.1111/j.1469-8676.2010.00119\\_1.x](https://doi.org/10.1111/j.1469-8676.2010.00119_1.x).

<sup>29</sup> Scheffer, “Materialities of Legal Proceedings.”

food preparation and food-giving, revealed that for the Baining as a community it is in the everyday grind of repetitive work that they saw an essential quality that differentiated humans from animals.<sup>30</sup> It was in recording the uninteresting and repetitive nature of the everyday life of the Baining people that Fajan discovered the importance of the everyday. Similarly, Austin Sarat and Thomas R. Kearne arguing for an everyday approach to the law, write that it is in the everyday that we find “what law is and can be”, and it is by studying the everyday that law’s problems and possibilities are revealed.<sup>31</sup> Thus, as with Blanchot, the everyday accommodates both action and inaction, and it is in the supposed ‘inaction’ and the uneventfulness of the day-to-day that a lot happens and misses our attention.

To summarise, in this introductory chapter I will examine the feeling of ‘nothing happens’ from the perspective of the everyday. From there, I divide the chapter into the main themes that I explore in the thesis. Given that the focus of this thesis is the everyday, I unpack what hearing in the everyday translates into and the role that courtroom space and language plays in this hearing and accessibility of law. I then proceed to examine waiting and being stuck in courts as an essential experience of women’s access to courts. Waiting in court is a particular spatio-temporal experience of time. The last theme explores what is meant by legal sensing, and what do lawyers rely on in the everyday practice in courts. The everyday lawyerly experience of courts for women litigants is not the same as it is for lawyers, for unlike the litigants, for lawyers a lot happens in courts every day.

### **‘Nothing happens’ every day**

The recurrent refrain of women litigants that ‘nothing happens’ in courts was something I initially did not pay much attention to. What I found out, though, is that when litigants described ‘nothing happens’ they referred to a spatial and temporal void. This space-time vacuum was accompanied by the fact that litigants had to wait, appear in courts at a given time, and were rarely permitted to speak or actively participate in the trial as their lawyers did much of the talking. Sensorially their experience was empty, as there was ‘nothing

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<sup>30</sup> Jane Fajans, *They Make Themselves: Work and Play Among the Baining of Papua New Guinea* (University of Chicago Press, 1997).

<sup>31</sup> Austin Sarat and Thomas R. Kearns, *Law in Everyday Life* (University of Michigan Press, 1995), <https://muse.jhu.edu/book/6331>.

experienced' in waiting as 'nothing' emerged from or after waiting. Women typically described their waiting in courtroom as: "Nothing happens. We just sit the whole day. Only documents are submitted" (*kuch nahi hota hai. Hum sirf pura pura dhin waha baithe rehte hai. Sirf document submission hota hai*) or "We have to show our faces and come back" (*sirf mooh dekhake waapis aana hai*). The physicality of waiting that requires them to be seated in a place for hours until the court takes a break or their case is called, is another aspect of waiting, where they physically and temporally found themselves 'stuck' with little else to do. This nothingness that they experience is the everyday boredom which they find themselves sucked into. Writing on everyday speech, Maurice Blanchot defines the everyday as "Nothing happens; this is the everyday."<sup>32</sup> He further queries what this non-movement might mean:

For whom does "nothing happen" if, for me, something is necessarily always happening? In other words, what corresponds to the "Who?" of the everyday? And why in this "nothing happens" is there at the same time the affirmation that something essential might be allowed to happen?<sup>33</sup>

Nothing happens then is a cue that something that should have followed didn't happen. Something that is significant and worthy of reporting. The perceptible feeling of 'nothing happens' that women describe itself indicates having 'waited' for 'something' but 'nothing' took place. However, something did 'happen' in the courts, even if it was just the quotidian. The everyday life of the law lacks the grandiose ambitiousness of its doctrinal promises and guarantees. If anything, the everyday is dull and boring, especially for litigants who wait in the side lines. It is the overwhelming life of everyday law, where time seems to stand still, the case stagnates and one is incapable of deciding "if there is a lack of the everyday, or if one has too much of it".<sup>34</sup> The everyday escapes us because, as Blanchot writes, it is what we never see first time, it lacks the panoramic vision; it is when we perceive it that boredom manifests itself. It is when the everyday becomes perceptible that it becomes accessible to our senses. 'Nothing happens' is a description of what women perceived about everyday law. As Blanchot points out, it is important to consider for whom nothing happens. In contrast to women litigants, lawyers experience the everyday

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<sup>32</sup> Blanchot and Hanson, "Everyday Speech."

<sup>33</sup> Blanchot and Hanson, 15.

<sup>34</sup> Blanchot and Hanson, 16.

differently. To begin with, something does happen, for that is the reason why they are in attendance in courts. The lawyerly and court time is of value, and lawyers are 'busy' and in a rush, this in itself indicates how much is happening in courts. Thus, the experience of the lawyerly everyday is different from that of litigants. The experience of the everyday itself is stratified, given that the experience of time and its non-movement that women express contrasts with the lack of time that lawyers have. Nevertheless, the question of for whom nothing happens is also a question that concerns the socioeconomic class and education of women. I discuss this later in the chapter when I write about the women I interviewed.

The everyday for Blanchot presents a semiotic instability that cannot be reduced to a Yes or No binary, and therefore it resists analysis. The everyday eludes both perception and speech and "breaks down structures and undoes forms".<sup>35</sup> Blanchot's reflection of the everyday as inescapable, yet beyond grasp, approaches the question of the everyday as an epistemological and ontological problem.<sup>36</sup> The everyday thus constitutes law, as much as it is constituted by it. It is the 'everyday' that feeds into questions of how lawyers know evidence, and how they use that in the daily practice of law. The mundane is essential to this everyday knowledge of law. Lawyers regularly rely on this everyday knowledge of who is a 'good' judge and assess if the judge is likely to give a favourable verdict, or should the case be manoeuvred so as to have it transferred to another court to be granted a favourable verdict. It is this experience of the everyday that reveals what a hearing means in the everyday context, in opposition to the right to a hearing guaranteed in law. It also reveals how the everyday time is altered by waiting in court.

I explore the above themes by studying the lived experience of the everyday, which is characteristic of anthropological methods. The study of the lived experience and everyday practices has implications for anthropological knowledge. It is in studying the uneventful and mundane of the everyday courtroom, rather than reading landmark judgements, that the nature of what takes place in the everyday courtroom is revealed. Yet, speaking of knowledge and querying how we know and what we know, goes back to questions of who we are,

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<sup>35</sup> Blanchot and Hanson, 17.

<sup>36</sup> Jen Hui Bon Hoa, "Totality and the Common: Henri Lefebvre and Maurice Blanchot on Everyday Life," *Cultural Critique* 88, no. 1 (13 November 2014): 54-78.

and what we sense. To know is a matter of perception, “there is no knowledge without someone who knows in a particular way,” writes anthropologist Kirsten Hastrup, reflecting on how anthropologists know.<sup>37</sup> Like Merleau-Ponty, Hastrup sees the body as central to the primacy of perception, and one measures the world through one’s own measurement of it.

The everyday law is what we witness in Franz Kafka’s short story “Before the Law”.<sup>38</sup> James Martel<sup>39</sup> writes that the law in Kafka’s short story is not the law with a capital l, but law with a small l: “Kafka’s parable invites us to think about what the law (in its ordinary “small l” sense) is when it is not connected to the Law, when it is experienced only in its banal ordinariness, its day-to-day mediocrity.” This Law with capital L is a Law which is “infused with justice”, and “it can be said to be a product of our expectation for justice”. The law that women litigants in my study experience is this *everyday* law with a small ‘l’. This law stands in contrast to the ‘Law’ before which they presumed they stood. Despite this, the power and control that everyday law yields in their lives as they stand before it, and the submission to this ordinary law with a small ‘l’, spirals their lives out of control. By talking about women’s engagement with law what emerges is how the determinacy of the Law coalesces with what they see as indeterminacy and inaccessibility in its everydayness. The interaction with the everyday law, if anything, reveals how unstable and ever-changing the legal definitions of established legal concepts are, such as, the right to a fair trial, the right to legal aid, reasonable time, or the right to be heard. How legal definitions and categories are experienced in the everyday, and how meanings are made and remade are beyond the control of the law. The everyday is ‘here and now’, in this it is both a spatially and temporally bound experience.

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<sup>37</sup> Kirsten Hastrup, “Getting It Right Knowledge and Evidence in Anthropology,” *Anthropological Theory* 4, no. 4 (2004): 455–472, 460.

<sup>38</sup> The short story, “Before the Law” appears in the “Cathedral” chapter in Kafka’s novel *The Trial*. As a stand-alone story, the story is about a man from the country trying to gain entry to the law through the door that is open, but is secured by a guard standing outside the door. He fails to gain access to the law because the doorman denies him access. For more, see “Before the Law by Franz Kafka,” <http://www.kafka-online.info/before-the-law.html>.

<sup>39</sup> James Martel, “Waiting for Justice: Benjamin and Derrida on Sovereignty and Immanence,” *Republics of Letters: A Journal for the Study of Knowledge, Politics, and the Arts* 2, no. 2 (2011): 158–172.



## Spatial Arrangement and Inaudibility

In this thesis I explore questions about how the law hears, what it hears and what it lends its attention to. I argue that the meaning of what is a hearing in court, and what kind of hearing takes place is reconstituted and redefined in the courtroom. With the aid of ethnographic explorations of the ‘trials’ I write on the many hearings in law. I start with a thick description of the inaccessibility of my own *hearing* to begin with, and then proceed to focus on the many ‘hearings’ in law. The questions and themes I delve into are based on the ethnographic study of the lower court, and on nine months of participant observations. At the very beginning, I focus on the nature of audibility and its correlation to how access in a courtroom is determined by who you are in the courtroom. I start with the physical space where cases are adjudicated, how the trial unfolds, and how the textual law and the written life of law hears and listens.<sup>40</sup> I start with audibility and the inability to hear the proceedings in the courtroom.

Spatial access determines audibility in court. The spatial hierarchisation of a courtroom impacts how we hear and how in turn the law hears us. What I essentially explore in this thesis is what Steve Feld has called the ‘sonic habitus’.<sup>41</sup> Simply put, it means a sonic exploration of knowing and being in the world. The habitus refers to essentially what living and feeling as a person in a particular environment means, and how our knowledge, social and cultural experiences and sense of place influence how we hear, and what we listen to.

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<sup>40</sup> Files, as Chapter Four of this thesis will demonstrate, occupy a prominent position in the creation of truth in the discourse of law and as an evidentiary witness. For Cornelia Visman, it is not what is contained in the files that primarily interests her, but the materiality of the files: how they are constituted and how “files control the formalization and differentiation of the law”. Law and files, she writes, mutually determine each other. Law, for Visman, is not just a medium of resolving conflicts, but “a repository of forms of authoritarian and administrative acts that assume concrete shape in files.” Likewise, she writes, only “by turning into parchment codices, string-tied convolutes, or standardized chrome folders, do files acquire face, form, and format”. For more, see Cornelia Vismann and Geoffrey Winthrop-Young, *Files: Law and Media Technology* (Stanford University Press, 2008), xi- xiii.

<sup>41</sup> Steven Feld and Donald Brenneis, “Doing Anthropology in Sound,” *American Ethnologist* 31, no. 4 (2004): 461–474.

From the perspective of this thesis, I explore what the women litigants I followed during the course of my study heard and what they did not hear. What is ‘unheard’ and what is ‘inaudible’ has two different meanings. By the ‘sonic habitus’ and the soundscape of the court I situated myself in, I mean the social and cultural contexts of litigants: who they are and how they listen, what the physical, oral and written law listens to, and the city and its specific geographical location where the court is situated, in this case, the city of Mumbai. This sonic exploration and soundscape of the court also takes into consideration what the natural rights enshrined in the international human rights’ convention,<sup>42</sup> such as the right to a fair trial, define the right to be heard.

Here I am in agreement with Tim Ingold’s criticism of the problem with teasing out the senses individually, Ingold criticises the tendency of studies in visual culture that presuppose the power of sight in images, as if eyes are “instruments of playback”, and similarly the focus on soundscape supposes “the power of hearing inheres in recordings”.<sup>43</sup> When I refer to the hearing and soundscape of the court in addition to the sounds of the courtroom, I refer to an embodied experience of what we hear and listen to. Charles Hirschkind, in his book on the ethics of sermon listening in Cairo, makes a similar argument.<sup>44</sup> How we hear is tied to not merely space and time, but also to the normative ear of the law, and how certain narratives are more appealing to law. I will explore this in further detail in Chapter Three.

Courtroom space is designed to enhance sounds, and to override, absorb, and block out unwanted sounds. As mentioned previously, the architectural space of the court I studied was paramount in asking the questions I pose in the thesis about law’s hearing. It was firstly the physical and spatial architecture of the court and the courtroom design that departed from the ornate, imposing cavernous doors and arched hallways that differentiate courts from other buildings that made this court both accessible and less

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<sup>42</sup> All key legal texts define the right to a fair trial, such as, article 14 of the International Covenant on Civil and Political Rights, and Article 6 of the European Convention on Human Rights. For more, see Chapter Three.

<sup>43</sup> Ingold, “Against Soundscape.”

<sup>44</sup> Charles Hirschkind, *The Ethical Soundscape: Cassette Sermons and Islamic Counterpublics* (Columbia University Press, 2006).

intimidating than others.<sup>45</sup> The aural architecture, as Barry Blesser and Linda-Ruth Salter note, can itself determine the use of a space.<sup>46</sup> So, doors that are open, unguarded and not imposing indicate that the space is accessible to all. They write:

Aural architecture can also have a social meaning. For example, the bare marble floors and walls of an office lobby loudly announce the arrival of visitors by the resounding echoes of their footsteps. In contrast, thick carpeting, upholstered furniture, and heavy draperies, all of which suppress incident or reflected sounds, would mute that announcement. The aural architecture of the lobby thus determines whether entering is a public or private event. When applied to a living room, those same acoustic attributes convey a different sense: cold, hard, and barren, as contrasted with warm, soft, and intimate.<sup>47</sup>

The spatial design of the court and courtroom reflects the purpose of the space, and by whom the space should be used. The lack of gatekeepers and security checks at the court entrance, and the free movement of people who do not have to justify their presence in the court premises, itself makes the lower trial court more public. Yet, the courtroom design has invisible markers that make it obvious what the space is for. The slight elevation of the witness box that is higher than the public but lower than the Magistrate's table is itself an indication of how the acoustic status of the witness is different and higher than that of others, yet lower than that of the Magistrate. As Blesser and Salter write, social functions and cultural values determine the sensory aspect of architecture. While the setting of the courtroom is the same, the slight elevation in the witness box changes the acoustics, the mood, and how the voice of the witness travels across the room: it is a voice that should be heard in the trial.

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<sup>45</sup> Here I refer to the rather imposing and ornate Gothic style structure of the High Court of Bombay. The High Court was established in 1862, and was one of the first high courts to be established in India.

<sup>46</sup> Barry Blesser and Linda-Ruth Salter, *Spaces Speak, Are You Listening?: Experiencing Aural Architecture* (MIT Press, 2009), 3.

<sup>47</sup> Blesser and Salter, 3-4.

Spaces affect the physical properties of sound waves.<sup>48</sup> And yet, listening as opposed to just audibility and hearing, is also a matter that needs to be evaluated in its cultural context: who is listening, who is speaking and for what purpose and to what effect? Blesser and Salter write: “Understanding aural architecture requires an acceptance of the cultural relativism for all sensory experiences.”<sup>49</sup> Thus, architectural acoustics are not limited to the physical structure of how courts are designed, but also to how law functions by enhancing certain voices and hindering and concealing others. I will demonstrate how this is done through the way in which courtrooms are spatially arranged to exclude and marginalise voices, and how the law procedurally permits only certain voices to be heard and turns a deaf ear to others<sup>50</sup>. This filtering of certain voices is essential to the functioning of the law. It is achieved by stalling, obstructing and delaying some voices through temporal delays, and by enhancing other voices by shaping narratives so that they appeal to the normative in law.

Writing on the role of architecture in sustaining power relations, Linda Mulcahy observes that in courtroom design spaces are segregated to create private zones inaccessible to the public both by physical separation and with regard to sightlines. Such arrangements “are all architectural embodiments of control in which notions of ‘visibility’ become a ruse”.<sup>51</sup> Thus, courtroom design with its raised floor, separation between the judicial podium and the public, private entrances and exits for judges and lawyers is a manifestation of how power is preserved and inequality sustained. David Evans, writing on the architectural body of law, observes that law with its lines, borders, categories, and inclusions and exclusions, is a manifestation of legal

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<sup>48</sup> Blesser and Salter.

<sup>49</sup> Blesser and Salter, 3.

<sup>50</sup> For a discussion on the role that architecture and spatial arrangement play in justice, see Linda Mulcahy, *Legal Architecture: Justice, Due Process and the Place of Law* (Taylor & Francis, 2010); Paul Rock, “Witnesses and Space in a Crown Court,” *The British Journal of Criminology* 31, no. 3 (1991): 266–79.

<sup>51</sup> Linda Mulcahy, “Architects of Justice: The Politics of Courtroom Design,” *Social & Legal Studies* 16, no. 3 (1 September 2007): 383–403, <https://doi.org/10.1177/0964663907079765>.

abstraction.<sup>52</sup> It is through court architecture, writes Piyel Haldar, that law administers, and makes known its ‘secluded’ and ‘sacral’ nature.<sup>53</sup>

Haldar adds:

...it is through the symbolic power of architecture that the outside world of imaginary events, the chaos of the exterior, comes to be reduced to the immobility of representation and a monitored order. This juridico-architectural movement reflects that dimension, a moment of contrast between the court house and the disruptive conditions of city dwelling, between the monument of a tradition and the fragmentary nature of the postmodern subject, where in the words of Bertolt Brecht; “[t]he streets are loud, the court is still<sup>54</sup>

In this court in Mumbai though, the outside and inside world intermingled. The walls, doors and windows did not limit sounds coming from the outside, making the court more accessible, breaking down barriers, and making it sonically dense and complex. At least at the first encounter with this court, the ‘door’ to the court was open. In Franz Kafka’s short story “Before the Law”, a man from the country asks “to gain entry into the law”:

Before the law sits a gatekeeper. To this gatekeeper comes a man from the country who asks to gain entry into the law. But the gatekeeper says that he cannot grant him entry at the moment. The man thinks about it and then asks if he will be allowed to come in later on. “It is possible,” says the gatekeeper, “but not now.” At the moment the gate to the law stands open, as always, and the gatekeeper walks to the side, so the man bends over in order to see through the gate into the inside.

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<sup>52</sup> David Evans, “Theatre of Deferral: The Image of the Law and the Architecture of the Inns of Court,” *Law and Critique* 10, no. 1 (1 January 1999): 1-25, <https://doi.org/10.1023/A:1008834110997>.

<sup>53</sup> Piyel Haldar, “In and Out of Court: On Topographies of Law and the Architecture of Court Buildings,” *Revue Internationale de Semiotique Juridique* 7, no. 2 (1 June 1994): 185-200, <https://doi.org/10.1007/BF01816606>.

<sup>54</sup> Haldar, 187.

In the story the ‘door’ and the ‘gatekeeper’ serve as powerful metaphors of access and denial in law. This is a powerful motif from the perspective of my thesis, as the women litigants seek what is obviously accessible in the law as articulated in the language of rights, but these rights fail to have sensorial effect. In Kafka’s *The Trial*, the bewildering labyrinth of rooms with endless corridors is another example of the architectural impossibility to ‘reach’ the Law.<sup>55</sup> The inaudibility of the trial, and what I write about as an ethnographer concerning the audible inaccessibility of the law is also my own experience. The bewilderment of how the court works in the first week of my fieldwork, the lack of audibility in the seat allocated for the public attending the trial, or the failure to witness the unfolding of a ‘trial’, are my experiences of law’s inaccessibility as much as those of the women who stood before the law. This inaccessibility plays out at several layers and levels: in the language of law, in its institutional form, in its sensual, temporal and spatial life, in other words in its day-to-day materiality. Peter Goodrich has similarly suggested that the question of language must take into account other signs, like architecture, dress, ceremony and the rituals that accompany legal tradition. In the languages of law, the spoken word is the word of law, and language is that of the institution.<sup>56</sup>

### **Hearing, listening and waiting in court**

As I have argued, courtroom spatialisation is an essential consideration concerning audibility and how sound travels, where it reaches and what remains out of bounds. The sounds that are heard in the lower courtroom are not merely from within the confines of the courtroom, they also include sounds from outside the court and from beyond the jurisdictional borders of the court. The snarls of the traffic snarls and the calls of vendors escape the physical borders and precincts of the court. They leak in and make themselves heard even when they have no business to be there. And yet the courts are all about regulating and

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<sup>55</sup> Kafka’s *The Trial* is a novel about Josef K, who is summoned to court for a crime that is not revealed to him. Kafka’s novel is a parody of the laborious and lengthy legal system, in which the protagonist is embroiled in a legal system without having any knowledge of his crime. Throughout, the law remains inaccessible and indecipherable to him. For more, see “The Trial by Franz Kafka,” <http://www.kafka-online.info/the-trial.html>.

<sup>56</sup> Peter Goodrich, *Languages of Law: From Logic to Memory to Nomadic Masks* (Cambridge University Press, 1990).

controlling sound: who speaks and who does not, who hears and who is heard and when are all essential to the procedural functioning of the law. The only actor that is permitted to speak out of turn is the judge, although what judges are essentially supposed to do is to hear and deliver orders. This leaking of sounds that escape the jurisdictional control of law, is an acoustic architectural failure of the law to control, subjugate and efface sounds that it does not want to hear. The law seeks to regulate and control the experience of sounds in the courtroom by the use of the gavel, with notices to “SWITCH OFF THE MOBILE PHONE”, “KEEP SILENCE” but as Hamilton et al. argue, “the sensorial leaks out of those efforts or dances around them altogether”.<sup>57</sup>

‘Sound’ by its very nature escapes the control of law, by slipping in and being heard. Indeed, the very nature of what we hear and what we don’t is beyond the control of the law. Thus, for the women litigants in my study, how they heard the law and what they heard is beyond law’s jurisdictional control, even though they stood before the law. By this I mean how the law comes alive and the degree to which it is visible is different for different people. By visible I do not speak of the sensory organ of sight alone, but how the effects of the law impinge on the sensorium. The way in which the law becomes embodied and implanted governs the lives of those women who seize control by using the law, and yet lose control when the law takes effect. The law also governs the way in which their lives and the stories they tell are structured in the language of the law, acquiring an aurality not entirely of their own making. They are heard and yet not heard.

In the words of Peter Brooks,<sup>58</sup> the law limits and formalises the conditions of telling and listening. “In modern judicial procedure, stories rarely are told directly, uninterruptedly. At trial, they are elicited piecemeal by attorneys intent to shape them to the rules of evidence and procedure, then reformulated in persuasive rhetoric to the listening jurors.”<sup>59</sup> So, what matters is what Brooks calls ‘narrative transactions’ that is the way in which the narratives are transmitted and decoded, “that is, stories in the situation of their telling and listening, asking not only how these stories are constructed and told, but also how they are listened to, received, reacted to, how they ask to

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<sup>57</sup> Hamilton et al., *Sensing Law*.

<sup>58</sup> Peter Brooks, “Narrative Transactions – Does the Law Need a Narratology,” *Yale JL & Human.* 18 (2006): 1.

<sup>59</sup> Brooks, 27.

be acted upon and how they in fact become operative. What matters most, in the law, is how the “narratees” or listeners—juries, judges—hear and construct the story.<sup>60</sup> This ‘narrative transaction’ pays attention to how the law listens, and what it listens to. What counts in hearing though is also how the women litigants listen. How we learn and know whether justice has been done or not done is a subjective experience of the law.

Having addressed the lack of audibility in the courtroom, I analyse the discrete and yet connected issues relating to a hearing in court. Does the language have a bearing on the nature of a hearing in court? Does the nature of a hearing change when the oral examinations are translated into a written record of what transpired in the courtroom? Firstly, the translation from the oral into the written record of the court is a translation from Marathi (the official language of Maharashtra) into English.<sup>61</sup> Secondly, the court record erases confrontations, reprimands by the Magistrate directed at the witness or sometimes towards the cross-examining lawyer not to mislead the witness or ask ambiguous questions, and insults that are commonplace in cross-examinations and courtroom talk are similarly erased. Thirdly, the Magistrate dictates to the transcriber what is happening in the public courtroom into words that are considered better suited for a record of the law, such as rephrasing questions and rephrasing monosyllabic Yes and No into passive sentences. Finally, what appears in the written record of the court is what the court listens to. It is what is read at the time of giving a verdict by the Magistrate, what is read by lawyers, and what appears in the court record that is considered of value. The rest as far as law is concerned is superfluous.

In contrast to the hearing that takes place, the women litigants I closely followed desired a different kind of hearing than the one provided to them in courts. Both the hearing they receive in court and the hearing guaranteed under the right to a fair trial differs from the hearing they expected and desired in court. One of the primary questions I examine is what does the right to a fair hearing and the right to be heard mean in an everyday context, and how is it

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<sup>60</sup> Brooks, 34.

<sup>61</sup> The official language of the higher courts is English. For lower judiciary, the court language can be the state’s official language. In the lower court, often three languages were used, English, Hindi and Marathi. Much of the use of the language also depends on what is the primary language of the judge and the lawyer.



experienced sensorially. To begin with, I ask what does hearing mean when the women I studied said that they were not ‘heard’ in court. To examine what hearing translates to sensorially in its everydayness is to unpack the very meaning of what rights guaranteed in law mean. I analyse the multiple hearings and the many layers of what a hearing implies in this thesis.

I approach the question of hearing and access by attending to the spatio-temporal context, and what access and hearing mean in this spatio-temporality. The question of how courtroom space is structured and designed has to be seen in a spatio-temporal frame too. The experience of time for the women litigants I closely followed in my study is a spatially located experience, and without the court space the passage of time and waiting would not be the same. For instance, waiting for a train at a train station as opposed to waiting for the case to be adjudicated and relief to be granted colour how time progresses, unfolds, or lingers. Likewise, the sonic dimension of the courtroom functions within a specific spatiotemporal frame.

The question of how the law hears, and what it hears, is within a specific spatio-temporal frame, and cannot be responded to without understanding how we hear the law. When I write about the spatial hierarchisation of the courtroom, I argue that this spatial segregation of who takes centre stage and who is marginalised also determines who speaks in court, and who is heard and who is considered worthy of court time. The soundscape of the Mumbai courtroom includes both sounds that escape regulation and leak into the courtroom, sounds in the legal trial that the textual law did not envisage, as well as sounds that are regulated by the court, such as who stands where and who is allowed to speak. The spatial hierarchy functions independently of the law that permits litigants to argue their own cases, for under the Advocates Act 1961 persons can defend themselves and argue their own case in any court of law. In one of the courts I attended, a woman who had filed a case under the Domestic Violence Act barged in, interrupting an ongoing trial, and insisted on arguing her own case as the law permitted her to do so. She argued that she was exhausted waiting, and could no longer afford a lawyer, especially with the constant delays either because of her lawyer, or because the respondent’s lawyer did not appear in court. Waiting was not merely a matter of physical waiting. Waiting endlessly for hours and years on end is intensified by the matrimonial discord that litigants were seeking – but were unable– to escape. The Magistrate denied her the opportunity to speak, insisting that she should be represented by a lawyer.

### Gut, legal sensing and narratives

“How can you tell truth from falsehood in the absence of any documentary evidence?” I asked one of my lawyer informants. The usual response was: “After so many years of practice I can tell this much ya,” or “We can smell it,” (*soogh lete hai*). This reference to smelling something foul or being able to recognise a dubious ‘truth’ is a sense lawyers often referred to. The lawyers I interviewed referred to a highly refined ‘legal sensing’ that they had acquired through the practice of law. While my informant was referring to her sense of smell, the other senses were complicit in being able to recognise falsehood. The story had to be tasted, chewed and ingested for it to pass muster. In determining truth from falsehood the lawyers use their ‘gut’ feelings, by this I do not refer to one single sense but to senses working in tandem. These feelings are developed in legal practice and represent a kind of knowledge that is a consequence of legal practice. In answer to my questions about how they knew something was suspicious, they often referred to more than one sense. They had “seen it with their own eyes”, it was “a sense of smell”, it came from their “gut”. It was a legal sensing that they had acquired through lengthy practice in law, a sense that a novice would lack. It is implicated in a particular cultural context and in a particular practice. In the Bourdieusian sense it was ‘the aesthetics of judgement’. It is this aesthetics of sense that Bourdieu refers to that is implicated and ingested physically and psychologically in a particular body. That is the purpose of apprenticeship with a senior lawyer who imparts this kind of ‘legal knowledge’ to apprentices that a study of doctrinal law does not provide.

Writing on his apprenticeship in Songhay sorcery, Paul Stoller notes how power is passed on to the apprentice through a magic cake (*kusu*), a kind of millet made of pulverised plants. Consuming the *kusu* confers the apprentice with ancestral power.<sup>62</sup> Lawyers similarly refer to this consuming and smelling something foul that is related to the gut when they assess ‘truthfulness’. In assessing whether the court will believe a story or whether this is how domestic violence victims usually behave, or whether in examining the violence narrative it meets evidentiary requirements, they employ their ‘gut’ and sense of smell that come together in a particular kind of legal sensing. This legal sensing requires an astuteness in transmitting and decoding stories, but it also entails an understanding of how they are listened to,

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<sup>62</sup> Paul Stoller and Cheryl Olkes, *In Sorcery’s Shadow: A Memoir of Apprenticeship among the Songhay of Niger* (University of Chicago Press, 2013).

received, and reacted to, how they ask to be acted upon, and how the stories become operative.

This is what Brooks calls ‘narrative transactions’, namely how narratives are transmitted and decoded: “In modern judicial procedure, stories rarely are told directly, uninterruptedly. At trial, they are elicited piecemeal by attorneys intent to shape them to the rules of evidence and procedure, then reformulated in persuasive rhetoric to the listening jurors.”<sup>63</sup> What matters most, in law, is how the ‘narratees’ or listeners – juries, judges – hear and construct the story.<sup>64</sup> This ‘narrative transaction’ pays attention to the senses of law, that is its aural sense, visual sense, its evidentiary sense, its ‘gut’. It is this legal sensing that the lawyers in my study also referred to, a sense that is indistinguishable from other senses and cannot be assigned to one sense alone.

In the next few sections I will present the Magistrate Court or the lower court that was the site of my study, and follow that with the fieldwork site and methodological overview. This also takes into account my position as a researcher.

### **Field site: The Lower Court**

In the first few weeks in Mumbai, I met many lawyers working on the Domestic Violence Act. The purpose was not merely to discuss the Act but also to understand which court they usually work in. The lower court (hereafter referred to as the Magistrate’s court or court) was situated in the eastern part of a suburb in Mumbai. The court was surrounded by low-income government and private housing, commercial buildings and middle-class apartment blocks. Located off a busy road, the court was a building that faced a noisy bustling street and was in close proximity to the railway station, like most Magistrate courts in the city. One of the courtrooms in which I sat overlooked a foot over bridge that connected the road to the station nearby. There was a constant ebb and flow of traffic on the road, and at peak hours long traffic jams were common.

There were four Magistrate courts, each of them numbered. I shuttled between the courts often depending on the matter at hand.<sup>65</sup>

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<sup>63</sup> Brooks, “Narrative Transactions – Does the Law Need a Narratology,” 27.

<sup>64</sup> Brooks, 27.

<sup>65</sup> The four Magistrate courts functioned in four separate rooms, and have a common office staff, even though the transcriber and court clerk were

I learnt early enough on the first visit to a lower court that if I wanted to hear or witness the proceedings in the lower courts I would have to be seated in the first rows of the courtroom within hearing distance of the judge.<sup>66</sup> The lower courts have none of the imposing architectural grandeur of the High Court of Bombay (hereinafter referred to as the High Court) and the Indian Supreme Court.<sup>67</sup> Often enough situated on main streets with ongoing traffic, the outside world of traffic jams, commuters, goods being sold and everyday goings on creeps into the courtroom partaking in court proceedings. To hear above this daily din is a challenge for those not seated in the front rows. Inside the court corridors, the sounds of children crying, loud chattering between clients and lawyers and bantering between lawyers is frequently heard.

Unlike High Courts, lower courts are not air-conditioned. There are no security checks and practically anyone can go in or out of the courts. In one of the court corridors on a sultry afternoon, a black and white stray dog strolled back and forth, much like the lawyers, before settling down under a low-hanging fan in the foyer between the two courtrooms. As I learnt later, he was a constant feature in the court waiting rooms, especially in the summer months, and he often sat undisturbed under the fan in the hall waiting area. Moreover, unlike the higher courts, the lower courts have a rather basic infrastructure. The high courts have monitors in every court room that display the ongoing cases in other rooms. These monitors help the lawyers, who often have cases running simultaneously in many courtrooms, to keep track. On the other hand, in the lower courts, lawyers often scurry between different courtrooms to check if their case serial number has been called out.

Although I had visited the High Court and the Supreme Court previously, this was my first visit to the lower criminal courts. From the road leading to the court complex, male lawyers, typically dressed in black gowns, white shirt and trousers approach persons who look like litigants and are dressed in 'non-lawyerly' attire. The first day that

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different in all courts. The four courts were located in the same building and on two separate floors and were collectively referred to as 'the lower court' by all lawyers.

<sup>66</sup> Pratiksha Baxi also writes about how audibility in a courtroom is based on privilege. Pratiksha Baxi, *Public Secrets of Law: Rape Trials in India*. (OUP, Delhi, 2014).

<sup>67</sup> The Supreme Court is situated in the country's capital, New Delhi.

I visited the Magistrate courts, I was accosted by various male lawyers selling me their legal services to me, much like an Indian street vendor might do. Given that soliciting by lawyers is illegal in India,<sup>68</sup> the lawyers do not approach you directly, but casually drop key words while passing, indicating the services they can render, such as drafting an affidavit, notarising a document, and so on.<sup>69</sup> Male lawyers typically stand outside the courts waiting around for clients, as opposed to female lawyers, who do not found wait outside or solicit clients.

### **The Court and the courtroom's spatial layout**

The court building was an eight-storeyed building. Two courts (referred to as 1 and 2) were located on the ground floor and the other two courts were on the first floor of the building (referred to as 3 and 4). On the first floor was a court office where the court registrar and other office staff that worked in the courts were located. On the ground and the first floor there were toilets that were initially out-of-use and later under repair. This meant that none of the litigants, including women with young children, had access to toilets. The staff toilet that was on the first floor was only for court staff and was locked. On the second floor, there was a chamber reserved for practising lawyers, a chamber for only women lawyers, toilets for lawyers, and a small canteen that only lawyers or court staff had access to. The floors from the third floor upwards were occupied by another court.<sup>70</sup>

In all four courtrooms the Magistrate was seated on a higher platform along with a clerk and a transcriber behind a computer. The Magistrate seated on an elevated platform occupied the central position in a rectangular room. Below the Magistrate's table was a table shared by lawyers and by police on court duty; the police sat facing the lawyers. This was followed by two rows reserved for lawyers, and three rows for the public, including litigants. In addition, on one side of the Magistrate there is a long bench reserved only for women and on the opposite side of the room there is another bench that was occupied by male litigants. There was an elevated witness box facing

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<sup>68</sup> Under the Advocates Act, 1961 and the Bar Council of India Rules, 1975 lawyers are prohibited from advertising their services or soliciting clients.

<sup>69</sup> The purpose of notarising a document is to authenticate it. The notary validates legal documents by signing and affixing his seal. The public notary is appointed by the state or by the central government.

<sup>70</sup> In order to ensure that my field site remains hidden, I will not identify this court.

the Magistrate in all four courtrooms and all four courtrooms had a dock reserved for the accused at the opposite end with “cage of the accused” written on it in Marathi (*aropacha pinjra*). The walls of most courtrooms indicate the cardinal points – North, South, West, East. North is where the Magistrate sits.<sup>71</sup> Above the Magistrate there were framed photographs of Indian leaders, Mohandas Karamchand Gandhi, Bal Gangadhar Tilak<sup>72</sup> and a regional leader, Shivaji.<sup>73</sup> On one side the windows there was a calendar in Marathi, Hindi and English hung on the wall, which the Magistrate, his staff and lawyers referred to when agreeing on the next date for a particular case. There were usually three calendars hung in a row next to each other.<sup>74</sup>

In both courtrooms, green files or court dockets of settled or ongoing matters were strewn on the floor, under tables, and on top of cupboards. Files wrapped in cloth or bundled together with string occupied a substantial amount of space. The dockets like litigants encircle the square courtrooms lying on the margins of the room floor, pushed against the wall. Underneath chairs and tables, dust settles on these pale green files. The court clerks brought the files beforehand based on the matters before the court on that day.

### Fieldwork and Methodology

As previously mentioned, this thesis is based on three phases of fieldwork for a total of nine months altogether. The last field visit mainly consisted of follow-up interviews. The primary objective of the third visit was to inquire into the status of the cases I was following, and whether they had been disposed of or settled. I also conducted

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<sup>71</sup>Mulcahy shows how in the earliest illustrations of court space there were four categories in the courtroom: the judge who was accorded the highest status sat on a raised platform reserved for higher ranking officials, then came court officials of varying categories, followed by lawyers and litigants as the third category. The last category was for spectators, who were seated at the margins of the courtroom. For more, see Mulcahy, *Legal Architecture*.

<sup>72</sup> Bal Gangadhar Tilak was a national leader who fought the British for Indian independence.

<sup>73</sup> Shivaji was a regional leader who in recent years, especially after the growth of linguistic politics in Maharashtra and the change in the name of the city from Bombay to Mumbai, has acquired great political significance. See Chapter Three for more on this.

<sup>74</sup>There were sometimes three to four calendars hung on the wall in English, Hindi and in Marathi.

follow-up interviews with the female litigants after the case had settled or disposed of.

In the first phase of the fieldwork, I visited five trial courts in the northern suburb of Mumbai. These courts were not in close proximity to each other and were located in distant suburbs of the city. For three weeks, I observed multiple proceedings under the Domestic Violence Act in these courts before narrowing down to one lower court, where I decided to locate my study. Reliefs under the Domestic Violence Act are sought in Metropolitan Magistrate courts; Magistrate courts deal with criminal cases and are the lowest courts on the criminal side. The court I chose was selected for a number of reasons. It was mainly recommended by lawyers working on the Domestic Violence Act owing to their experience with the court. According to them, this court was a 'functioning' court, where cases 'progressed', as opposed to merely being a place where dates were doled out. Secondly, while domestic violence cases were heard throughout the week, at least two of the four courts (these courts function more as courtrooms and are referred to as the lower court collectively) had a day allocated specifically to hearing only domestic violence cases.<sup>75</sup> The court was shut on the second and fourth Saturday of every month. Once I identified the lower court, I located myself specifically in these two courts, which functioned from 11 am to 5 pm from Monday to Saturday. My main task involved conducting participant observations of the everyday court proceedings. This involved taking detailed notes of ongoing domestic violence cases, namely how the trial commenced, the nature of the arguments, what kind of evidence was presented, how the court dealt with such cases and how do lawyers/judges/litigants respond or react, and generally how the court proceedings were conducted and the day-to-day functioning. This included observing what took place in court corridors as lawyers and litigants chatted, and conversations I overheard in women lawyers' chamber.

Within a period of nine months I witnessed 83 cases. These cases were in different phases, either in the application stage, the evidence production stage, the argument stage, or the cross-examination stage. Sometimes I may have merely witnessed a cross-examination without learning anything additional about the case or I just attended the final arguments. There were days in court where I

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<sup>75</sup> Being a trial court, the court also deals with police cases. These included the appearance in court of those in police custody and bails applications for the accused.

only witnessed adjournments, that is, lawyers seeking another date to respond to an application made by the opposite side or sought another date because of an absent client or lawyer. I did not include those cases in the above number, unless I heard at least some argument, or the lawyer expressly argued for another date and provided a reason for it. Witnessing several cases at different stages offered an understanding of how cases were handled irrespective of lawyers or the paying capacity of litigants. I witnessed how different cases proceeded, what role various actors played in the case proceedings, and gained a general perception of how long on an average a case would take to be disposed of. I did not always have an opportunity to approach the lawyers whose arguments I witnessed in court. As for litigants, most of them were reluctant to talk to a researcher. The best way to approach litigants and gain their trust was through their lawyers. Sometimes I approached the lawyers in court corridors or spotted them in the chamber reserved for lawyers in courts. I would typically introduce myself and my work to every lawyer I approached. Often a lawyer would introduce me to another lawyer. But many introductions and conversations would often start in the courtrooms themselves with lawyers sitting next to me. It was in the courtroom that I met the lawyers – Tara, Nidhi, Hina, Manju, Varun – whose cases and style of working and practices I came to follow more closely. I followed the five lawyers closely through the course of my study, following the domestic violence cases they argued, interviewing them formally and informally as I hung-out in their offices at length, and interviewing their clients.

The lawyers I closely followed appear at various stages in my chapters, including the clients I met through them. Of the five lawyers, at least three women lawyers, Nidhi, Hina and Manju, took cases of women whose financial ability to pay was limited. Hina and Manju's clients primarily belonged to the Muslim community. Nidhi only took the cases of women litigants and did not defend men. Tara, on the other hand, defended both men and women who belonged to a higher economic stratum. Her clients would often appeal against lower court verdicts in the higher court. Tara had defended famous Hindi movie celebrities. Varun's clients also consisted of men and women who came from a financially comfortable background and were highly educated. He was one of the few lawyers whose office was in the vicinity of the High Court in southern Mumbai. The women litigants I met through these lawyers thus belonged to different religious backgrounds and differed considerably in the education they had received. The financial backgrounds they came from were equally diverse. Yet, in order to survive the rigours of court – the waiting, the



delay, the emotional and financial strain of litigation – these women had to be economically, socially and emotionally capable.

In addition to my extended case-study method that followed five lawyers and a series of women and their cases through the period of the fieldwork,<sup>76</sup> I also conducted semi-structured interviews with twelve lawyers during the period. With some of them I had lengthy interviews that I conducted in their offices, and with others our conversations took place in the courtroom itself or in the lawyer's chamber in the court building that was part of the common area. These included conversations that started in courtrooms, and sometimes led to long unstructured interviews outside of the courtroom. At least five of the twelve lawyers I met and interviewed on several occasions, and this included attending their cases. None of the interviews were audio recorded as many participants were not comfortable about giving a recorded interview.

It was through the five lawyers mentioned above (who for ease of reference I call lawyer informants) that I met the eight women litigants of my study. I followed their cases at different stages, interviewed them repeatedly and also had informal conversations with them. In total, I followed twelve women litigants during the fieldwork. Not all appear in this thesis, and not every conversation with every woman and every lawyer finds its way into this thesis, although almost all the eight women litigants I write about reappear in several chapters of this thesis. In this thesis, I specifically write about the stories of Sameera, Zarna, Farzana, Preeti, Simran, Sharon, Meenakshi and Swagata. Sameera, Zarna and Farzana, all Muslim women who were married at a young age. They had all received a basic education, and Zarna and Sameera had studied further and aimed to work after their marriages had broken down. Their respective brothers accompanied them to court and to their meetings with lawyers. Preeti, Simran and Swagata, on the other hand, were professionally qualified and were financially independent even prior to their marriages. Sharon, who lived with father, was a graduate and worked in a private company in an administrative position. Preeti was an award-winning dentist and Simran had studied management and worked for a technology

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<sup>76</sup> The extended case method entails following cases involving the same actors through a certain period of time. The purpose is to trace the case in its social context. Baxi, specifically, discusses the extended case method in her ethnographic study on rape trials, showing how it provides an opportunity to map changing legal norms. For more, see Pratiksha Baxi, *Public Secrets of Law: Rape Trials in India*. (OUP, Delhi 2014).

company in Delhi before moving to Mumbai when she married. Meenakshi, for her part, started working part-time after her divorce and lived independently with her children.

Predictably, access to competent lawyers was based on the women's socioeconomic status and education. Higher status in these respects increased their access to courts, ensuring quicker relief and sometimes better monetary relief. Yet, almost all the women I studied who lasted the court hearings had social support, the financial capability to come to court for a hearing, and had accommodation in the interim period before they received any relief. Post-colonial feminist scholars such as Chandra Mohanty have challenged a common analytical category of 'women' that can be cross-culturally and universally applied, arguing that not all accounts of gender inequality are homogenous.<sup>77</sup> Similarly, women's access to courts is determined by a number of potential factors, such as the women's socioeconomic status, caste, religion, and education. Such factors affected the degree to which they were able to wait-out and access courts, or not to wait and to opt out. These options were based on who they were and were subject to the gendered dynamics and inherent power that is vested in the Indian legal system. Greater financial capability often meant that their time was more valued both by lawyers and by the courts.

Not all the cases I write about were completed by August 2015, making it all the more imperative that the name of the court and its exact geographical location in Mumbai remains concealed. It is also important to note that in at least seven of the eight cases I followed, the cases were already ongoing. I witnessed these cases after the interim application stage, apart from Simran's case, where settlement negotiations were still ongoing when I met her. The purpose of my visit in August 2015 was to follow up the women litigants and their lawyers concerning the status of their cases.

In all cases, I have used fictitious names for both lawyers and litigants, and have made every effort to erase identifiable institutional or social markers.<sup>78</sup> As far as language is concerned, in places where the

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<sup>77</sup> Chandra Talpade Mohanty, "Under Western Eyes: Feminist Scholarship and Colonial Discourses," *Boundary 2* 12/13 (1984): 333–58, <https://doi.org/10.2307/302821>.

<sup>78</sup> This thesis has also benefited from a formal interview I conducted with two Magistrates. Both Magistrates spoke to me reluctantly. I also attended a mediation meeting between parties along with Varun, one of my informant

conversation took place in Hindi or Marathi, I have translated these conversations into English. As far as interviews are concerned, the majority of my interviews with litigants took place in Hindi. In certain cases, I have retained the original language or phrases in the original language to ensure that the gist is not lost in translation, but in most cases I have translated these conversations into English.

### **Researcher Positionalities**

After two days of being seated on the back rows of the courtroom, I began to wear the barrister's bands that lawyers practising in courts wear, and that forms an insignia of the legal profession.<sup>79</sup> This white neckband afforded me a privileged spatial position in the courtroom spatial hierarchy, that is, the front row seats reserved for lawyers only. From the first row I could witness the proceedings more closely, being now able to hear the arguments and exchanges between lawyers, the Magistrate and litigants that otherwise could not be heard in the back rows. However, even from the front row seats I often had to strain to hear what was being said. Then again, some of these proceedings were lost either due to my initial inability to keep up with the fast-paced arguments or because the constant switching of languages by all participants made it difficult to follow the trail of words, as an argument or dialogue could start in one language and end in another. But while the benefit of being seated in the front row was the audibility of ongoing matters, at the same time it distanced me from the litigants seated behind.

The barrister's bands provided legitimacy for my presence in the courtroom, and a sense of purpose in the eyes of other lawyers. It

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lawyers. In addition, I attended a meeting between a High Court judge and Tara and her client, where the judge was persuading the woman litigant to agree for a lesser settlement, since her husband was unwilling to budge, and the case would go on endlessly without any possible resolution. I also interviewed the same judge at a later stage.

<sup>79</sup> An oblong two-piece neckband is worn by both lawyers and judges in India. Made of white cloth, it is referred to as barrister's bands. Chapter IV of the Bar Council of India Rules, 1975 specifically lays down the dress code to be followed for male and female lawyers when appearing in court, and one of the requirements is these white bands. It additionally regulates that the colours and design permitted in court may be "white or black or any mellow or subdued colour without any print or design." For more, see "Bar Council of India Rules," [http://lawmin.nic.in/la/subord/bci\\_index.htm](http://lawmin.nic.in/la/subord/bci_index.htm).

regulated the gaze that can otherwise be intimidating. Nevertheless, as a new lawyer and a woman lawyer in a criminal court, I stood out. Lawyers tend to practise in the same courts, and thus are familiar with judges and court staff and other colleagues. The gaze that followed me was often the lawyerly gaze that did not recognize me as a 'regular' in the court, nor did I accompany a senior lawyer, that would have immediately located my ranking and area of practice. My lack of files or cyclostyled green dockets and my frantic note-making often drew the attention of lawyers sitting next to me. I was a subject of attention and generated much curiosity, unlike litigants. From the court staff to lawyers, my lack of familiarity and my not having been seen before led to questions and stares. Was I apprenticing with a senior lawyer? Who did I work for? Was I a sole practitioner? What was I writing in my notepad? These were among the questions I often fielded. Often, the lawyer sitting next to me would peer into my notebook to see what I was writing. Sometimes I would be mistaken for a law student. On one of the late evenings when I was waiting for a mediation that was to take place after court hours, the court staff waiting outside the Magistrates' office asked me why they had never seen me before and what kind of matters or cases did I specialise in.

Inside the courtrooms, it took a while to understand the bureaucratic and administrative functioning of the court proceedings. As someone who has studied law, I assumed that the court day-to-day functioning would immediately be understandable. However, it took me a week in court to learn that court procedure began the day by 'calling all matters', and then 'keeping back' matters for arguments for later in the day. Thus, lawyers would typically first run through the day's board to see what matters were coming up, and I started following this lawyerly rhythm of studying the board to see what matters are to come up later in the day as it helped me to plan my day better. I could arrange meetings when the board was being 'called out' and return to court when matters were 'kept back' for arguments. The 'calling of the board' often meant announcing all matters reserved for that day. Often matters reserved for a date did not take place either because of absent parties, absent lawyers, lack of time in court for an argument or lawyers wanting to adjourn the matter to another date. Matters for arguments are usually 'kept back' after all the matters on the board for the day have been called out. The purpose is to save time and it lets the court set the agenda for the day. Lawyers that seek an adjournment do so when the board is being 'called out'.

Reading the board also established my position in court as someone who was there with a 'purpose'. Unlike the lawyers, who often shuttled from one courtroom to another or one court to another

in a constant hurry, holding onto their dockets or case files, I rarely displayed any such urgency. In her ethnography of a trial court in Ahmedabad, Pratiksha Baxi similarly records how her pace as a researcher palpably differed from the pace of a practising lawyer. In her initial days in court, Baxi recalls being chided by a lawyer for walking too slowly, with the warning that if she wanted to learn the law she would have to learn to walk faster.<sup>80</sup> The gait and the pace, she adds, also represented the urgency of a lawyer's time as opposed to that of litigants for whom time drags, and whose gait is marked by 'boredom and exhaustion'.<sup>81</sup> My training as a lawyer, and not merely as a researcher, afforded me a more privileged position in the eyes of lawyers, who despite my lack of experience in legal practice saw me as a colleague. This position in certain cases also meant sharing trade secrets, such as delaying cases to achieve certain ends or to frustrate the other party. These were shared in confidence and with the knowledge that we belonged to the same profession. Professional privilege was also a feature of my interactions with the women litigants, who often sought my legal opinion on their case. In the courtroom, much like the litigants, I as a researcher waited for 'something to happen', for a trial to 'take place' and for cases to move forward in the hope that another date would not be allocated to the case I was currently following.

For the purpose of this thesis, I did not choose the cases I would follow. The cases I focus on in this thesis are not landmark trials whose stories spilled outside the courtrooms into media platforms and op-ed pages. These stories never entered the public discourse. It is cases such as these that are unlikely to be cited as precedents, a legal discourse that forms the essential day-to-day affairs of lawyers and judges. Instead, I observed 'ordinary or everyday cases' that took place within a period of nine months.

As mentioned previously, my ethnographic study had two parts, my second field trip being much smoother than the first. I was already in contact with the lawyers I would follow, and the location of my study was fixed. On the first day of my second field trip as I got off the foot-over bridge near the court, a male lawyer approached me asking me if I needed any work doing. I said I didn't. Two other

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<sup>80</sup> Baxi, *Public Secrets of Law*.

<sup>81</sup> Pratiksha Baxi briefly refers to the feeling that nothing seemed to happen but does not delve any further. In my thesis, the perceptible feeling of nothing happens emerged mainly from talking to litigants in my study.

lawyers approached immediately after. I was not wearing my barrister's bands that would immediately locate me as part of the profession, though I was dressed in sober colours of black and white. When I responded that I was a lawyer, they lost interest and walked away before even giving me a chance to ask any questions. They seemed unaware of whether Magistrates in the four courts had changed. When I entered the court, in two courtrooms the first Magistrate had gone for a jail visit and the second Magistrate was on juvenile court duty every Monday and Wednesday. Both courts on the lower floor heard domestic violence cases on all other days from 2.45 pm onwards. I stepped onto the dais to speak to the sari-clad woman court clerk to find out about the board in courtroom No 12. "What are you doing?" she yelled angrily. "Get off!" I stepped back, a little surprised. The male court clerk sitting next to her joined her in the reprimand. "You're lawyer, how can you climb on the dais?" he asked. "But the judge isn't there," I replied. "So what, do lawyers ever climb on the dais?" (*lawyer kabhi dais pe chadta hai*), a police official sitting below the dais added, "Even we don't ever climb the dais. Only court staff and the judge can" (*hum bhi nahi chad sakte hai. Sirf court staff or judge*). I smiled and apologised for my mistake. My lawyer informant Manju later explained that mounting the dais, even when the judge is absent, is a mark of disrespect to the court since it is a position that can be only occupied by the judge. This response is representative of how the court is seen as a sacred place, and the seat of the judge as deserving of the respect and devout and ceremonial rituals that are often reserved for revered places. The court is after all called a *nyay mandir* (temple of justice). The ceremonial and almost theatrical collective shudder by the court staff in response to a lawyer stepping onto the judge's dais marks a ceremonial reverence for the law. Ritual and the ceremonial, observes Peter Goodrich, "give credence to the law, and effect to the rule."<sup>82</sup> The ceremonial is not merely ornamental in nature, for rituals give law authority and make it effective.

What I finally did learn was that a Magistrate in the ground floor courtroom No. 1 had been transferred to another court, and there was a new Magistrate in his place. Courtroom No 2 on the ground floor had the same lady Magistrate as before. As for the courtrooms on the first floor, courtroom No. 3 also had a new male magistrate and courtroom No. 4 had the same Magistrate. The two Magistrates that were still present and I was familiar with would

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<sup>82</sup> Peter Goodrich, Lior Barshack and Anton Schutz, *Law, Text, Terror* (Routledge 2013), 18.

eventually be transferred after ten months I was informed by the court clerk. Before I could register, the new Magistrate on the first floor of courtroom 3 was transferred and was replaced by a woman Magistrate. There were no domestic violence cases on the day I arrived in court, since such matters were still held on only Fridays in courtroom 3 and 4 – a ritual that the new incoming Magistrate still maintained. The same black and white mongrel was still resting underneath the fan. I recognised a few litigants, such as those whose cases I had witnessed in the early months of the year – a mother fighting a case against her daughter, a bald man carrying a rucksack, who had quit his merchant navy job to contest the domestic violence case filed against him, the two sisters in their 70s who had filed a case against one of their daughter's husband,<sup>83</sup> and Sharon along with her father, who I had met on my first visit through Varun. Their cases were still in court, and I slipped easily once again into the 'rhythm' of the court.

### **Limitations and Biases in the Research**

This thesis specifically follows the lives and cases of women using the Domestic Violence Act. From that perspective, the lawyers I closely followed and the case-study method I adopted concentrates exclusively on women litigants, and not on men who come before the court. Under the Domestic Violence Act only women as a category can claim reliefs as an aggrieved person defined under Section 2 (a) of the Act. The definition of the aggrieved person includes "any woman" who is or has been in a domestic relationship with a respondent and has been subjected to domestic violence. Such women can claim reliefs under the said Act. The definition of the respondent (Section 2 (q), on the

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<sup>83</sup> I had met two sisters in their 70s in the court waiting area in the initial months. We were waiting outside the courtroom on the ground floor for the Magistrate to return after lunch. They approached me and asked me if I was a lawyer, since I was wearing barrister's bands. I responded in the affirmative without explaining that I was here predominantly as a researcher. The elder sister lived in her mother's apartment and had filed the domestic violence case to evict her daughter and her husband, who were refusing to leave the apartment. The younger sister, however, did all the talking, arguing that the apartment was her late mother's property and all the siblings had an equal right to the apartment. They sought my legal opinion on whether the Domestic Violence Act was a good law, and whether reliefs are granted in time. Their first lawyer rarely appeared for any hearing of the case, and the case was still moving slowly despite changing their lawyer. After I revealed I was a researcher, they lost interest and were not keen to be interviewed. They did, however, insist that I should write about how slowly the case moves, and that the court frequently grants adjournments. *Fieldnotes from February 2014.*

other hand, specifies that an application to seek relief can only be filed against “any adult male person”. This ethnographic project thus only explores the interaction between women litigants and the law. Questions like: Did men who are summoned to court owing to a complaint filed by the woman have a vastly different experience of the law? or What are the effects of temporal delay on their lives are not considered. What can be said is that it is women who initiate court proceedings and have the right to pursue claims under the Act, while male respondents are summoned to court and are compelled to respond to court proceedings. My omission of men in this study is a conscious decision, as my main focus is on studying how a civil law on violence where women can claim reliefs is experienced by female litigants. This thesis thus lacks insights into men’s experience with the law and courts. The focus on women litigants also extends to the lawyers who I came to follow most closely; with only one exception they are all female. I found myself at ease following women lawyers whose offices and in whose company I found comfort and safety. Their interest in my marital status or why I did not wear any visible markers of being a married woman, or how I had left my husband in Finland to do this fieldwork, did not cause me any discomfort, nor did they look upon me with suspicion. In my initial months as a researcher, I met more male lawyers and they would typically inquire about my marital status since I wore no evident ‘markers’ of my marital status. They would often express surprise on learning that I was staying away from my husband for nine months and that I had no children despite being married for six years.

Another omission in my thesis is the fact that my ethnographic project in the lower court does not reveal the impact the new Act has had. I do not, for example, include an analysis of how the Act is used in conjunction with other laws related to family and custody issues. Nor do I evaluate minute aspects of how the Act is being implemented in courts or the kind of infrastructural challenges it faces, or how the infrastructure provided for under the Act exists and functions in Mumbai courts in general.

Less a deliberate omission and more in the nature of a general observation, during my nine months of fieldwork I did not once run into a Protection Officer, nor did any of the lawyers and litigants I approached meet with a Protection Officer. Under the Act, a Protection Officer should be appointed by the State to assist the woman in filing the case and making an application; the Officer is supposed to function as an intermediary between the court and the woman. From that perspective, this is not a study to survey how the Act is ‘implemented’ in the court.



As far as my positionality is concerned, my training as a lawyer and the spatial privilege it afforded me in the courtroom and with lawyers changed the nature of my access, and thus also my research. This includes the kind of access that was available to me as a woman researcher. Women litigants were often at ease when talking to me and often sought my 'legal opinion' about how they performed in a cross-examination or whether their lawyers should have adopted a different argument in court than the ones they did. Did I think they should settle their cases? These questions located me as a lawyer and as a woman, despite their knowledge that I was researching the Act as a researcher. They would often inquire if there were domestic violence cases in the country where I currently lived, or did cases there also take many years to resolve. In these situations, I was always uncertain about what response would be appropriate. I refrained from giving direct legal advice and politely explained that my expertise in court matters was limited. Yet in certain situations I did respond based on my legal knowledge of the Act. Hence I replied to questions women litigants asked me about what I thought about the violence they had suffered, or did I think they would receive the relief they sought. In my interviews with male lawyers, when they sought my opinion on what I thought of the moral character of a woman in a live-in relationship seeking relief under the Act or the 'shamelessness' of an unmarried woman living with a man and then seeking relief under the Act, I would often fall back on what the law states, citing the protection it guaranteed to women even outside the purview of marriage.

### Positioning the Study

This thesis looks at day-to-day micro-level engagement with the law, and what happens to the law in the everyday.<sup>84</sup> By this I am not referring to the way in which the law retains its power despite the gap between 'law in books' and 'law in action',<sup>85</sup> to quote Dean Roscoe

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<sup>84</sup> Law's day-to-day micro-level engagement has been previously defined as 'legal consciousness'. Here law is not merely a certain consciousness of how law works, or what it is, but the manner in which people produce and experience legality. For more on this, see Sally Engle Merry, "What Is Legal Culture? An Anthropological Perspective Using Legal Culture," *Journal of Comparative Law* 5 (2010): 40–58. Sally Engle Merry, *Getting Justice and Getting Even: Legal Consciousness among Working-Class Americans* (University of Chicago Press, 1990).

<sup>85</sup> Dean Roscoe Pound invented the expression 'law in books and law in action' that denotes the gap between what is in the books, and how law is

Pound's influential distinction. Instead, my research project in a lower court interrogates question relating to access to the law in everyday contexts: What does accessing the law mean and How do we access the law? Here I use a sensory approach when writing about access to the law. Law and the senses is still a fledgling field that focuses on a sensory approach that is either "an object or a mode of study".<sup>86</sup> I move beyond the discrete workings of individual senses to provide a sensory understanding of access to the law.<sup>87</sup> In a recent work on law and the senses and possibly the most relevant source for this study, Hamilton et al. argue that law has been somewhat late at arriving at a sensory way of knowing in comparison to other disciplines, mainly anthropology.<sup>88</sup> Following Hamilton et al., I have sought in this thesis to both engage with the role senses play in law and to explore how the law senses. It is anthropology as a discipline that eagerly engaged with the exploration of the senses from the 1980s, notes David Howes.<sup>89</sup> The call for a "sensuous scholarship"<sup>90</sup> by Paul Stoller and Constance Classen's alternative "sensory models"<sup>91</sup> shifted attention to using bodies and senses for ethnographic analysis. This exploration of the

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practised. For more, see Roscoe Pound, "Law in Books and Law in Action," *American Law Review* 44 (1910): 12.

<sup>86</sup> Hamilton et al., *Sensing Law*.

<sup>87</sup> For more, see Hamilton et al. James Parker, *Acoustic Jurisprudence: Listening to the Trial of Simon Bkindi* (OUP, 2015) (Intro and Ch 1), [https://www.academia.edu/18175394/Acoustic\\_Jurisprudence\\_Listening\\_to\\_the\\_Trial\\_of\\_Simon\\_Bkindi\\_OUP\\_2015\\_Intro\\_and\\_Ch\\_1\\_](https://www.academia.edu/18175394/Acoustic_Jurisprudence_Listening_to_the_Trial_of_Simon_Bkindi_OUP_2015_Intro_and_Ch_1_). Veit Erlmann, *Hearing Cultures: Essays on Sound, Listening and Modernity* (Bloomsbury Academic, 2004).

<sup>88</sup> Hamilton et al., *Sensing Law*.

<sup>89</sup> For more see, David Howes, 2013, "The Expanding Field of Sensory Studies," *Sensory Studies* (August 2013), <http://www.sensorystudies.org/sensorial-investigations/the-expanding-field-of-sensory-studies/>.

<sup>90</sup> Stoller, *Sensuous Scholarship*.

<sup>91</sup> Constance Classen, "Foundations for an Anthropology of the Senses," *International Social Science Journal* 49, no. 153 (1 September 1997): 401-12, <https://doi.org/10.1111/j.1468-2451.1997.tb00032.x>.

understudied senses also revealed what other cultures think of sight, writes David Howes.<sup>92</sup>

Studies on law's preference for the ocular has been widely discussed. The pioneering work of Costas Douzinas and Lynda Nead in *Law and the Image* analytically mapped the relationship between law and the image, including how law has shaped, regulated and used images, and how law and justice have been represented in art.<sup>93</sup> Scholarship on visual legal studies that looks at law's engagement with computer-generated evidentiary artefacts of photographs and images has received considerable attention. This is especially true with practices involving the ways in which the law processes images, as well as the ways in which the intersection between law and images causes anxiety about what is 'real'.<sup>94</sup> Joseph Pugliese's meticulous analysis of how the Abu Ghraib torture photographs acquire evidentiary status in court because the visual record "underwrites their evidentiary and testimonial qualities" is another example of the status of images in law.<sup>95</sup> Likewise in his recent work *Experiencing Other Minds*, Feigenson analyses how digital simulations recreate our perceptual worlds. Feigenson is critical of the supposed 'accuracy' that simulations try to achieve visually and aurally when they are submitted as evidence in court. The use of digital technologies to appeal to juries produces a 'similarity bias' he argues,<sup>96</sup> as when produced as evidentiary artefacts in courtrooms they make our sensual perceptual experiences vividly present.<sup>97</sup> Questions relating to how a rape victim looks or behaves similarly have relied on the sensory even before photographs were presented in court as evidence. Desmond Manderson has called this

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<sup>92</sup> "The Expanding Field of Sensory Studies – Sensory Studies."

<sup>93</sup> Costas Douzinas and Lynda Nead, eds., *Law and the Image: The Authority of Art and the Aesthetics of Law*, 1 edition (University of Chicago Press, 1999).

<sup>94</sup> See, for instance, Richard K. Sherwin, "Visual Jurisprudence," *NYL Sch. L. Rev.* 57 (2012): 11; Richard K. Sherwin, *Visualizing Law in the Age of the Digital Baroque: Arabesques and Entanglements* (Routledge, 2011).

<sup>95</sup> Joseph Pugliese, "Abu Ghraib and Its Shadow Archives," *Law and Literature* 19, no. 2 (2007): 247–76, <https://doi.org/10.1525/lal.2007.19.2.247>.

<sup>96</sup> Feigenson, "Experiencing Other Minds in the Courtroom."

<sup>97</sup> Sonal Makhija, "#review: Experiencing Other Minds in the Courtroom," *Allegra*, 1 December 2017, <http://allegralaboratory.net/review-experiencing-minds-courtroom/>.

the ‘aesthetic analysis’ of law, taking into account the fact that the consumption and circulation of law itself appeals to the senses.<sup>98</sup>

Similarly, James Parker has recently argued for taking cognizance of sound and the need for an acoustic jurisprudence in his work on the sonic environs of the International Criminal Tribunal for Rwanda (ICTR). Parker argues that sound is important in the administration of justice, including not merely architecture, and the phenomenological aspects, but the question of hearing and listening as well. For Parker, this acoustic environment of the ICTR includes its physical environment as it is “constructed, understood and perceived”.<sup>99</sup> I bring in Parker’s work here because in my thesis I also take into consideration the soundscape of the court, and the many dimensions that hearing and listening have. This thesis moves beyond the emphasis on one sense or even beyond the five senses. Instead my ethnographic project attempts to understand how we make sense of the law, in particular how women litigants trying to access the Domestic Violence Act and reliefs under the Act ‘make sense’ of the law and how women’s access to the law in the everyday is governed by ‘who’ is sensing. A trial is merely “a tip of a giant iceberg”, writes Susan S. Silbey. The law spills into everyday and mundane mediations and yet remains indiscernible. It inflects and is sedimented in the lives of those who access the law, and hence what law does needs to be observed.<sup>100</sup> The force and power of law is unravelled through an ethnographic project, not so much in observing ‘the trial’ in a courtroom, but in observing what happens everyday and what law does to the everyday.

My study queries what everyday access to the law means, and how we reach the law. I take an ‘embodied sensory’ approach to the question of what access to the law means and how embodied this

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<sup>98</sup> Desmond Manderson, *Songs without Music: Aesthetic Dimensions of Law and Justice* (University of California Press, 2000), <https://muse.jhu.edu/book/25662>.

<sup>99</sup> James Parker, “Towards an Acoustic Jurisprudence,” *Critical Legal Thinking* (blog), 27 September 2011, <http://criticallegalthinking.com/2011/09/27/clc-2011-towards-an-acoustic-jurisprudence/>.

<sup>100</sup> Susan S. Silbey, “After Legal Consciousness,” *Annual Review of Law and Social Science* 1, no. 1 (December 2005): 323–68, <https://doi.org/10.1146/annurev.lawsocsci.1.041604.115938>.

access to the law is. As I have argued, questions on how law senses are contingent on how we sense, and who this ‘we’ is. This thesis starts with the dense sonic environs of the courtroom, quite different from a quiet, distant sterile space that previous work on courts have written about.<sup>101</sup> This exploration relies on the workings of all the senses, and above all the ‘gut instinct’. To give an example, anthropologist Charles Hirschkind writing on hearing cassette sermon recordings in Islamic Revival movements in Cairo, focuses on the senses as a prerequisite to a more embodied experience of listening.<sup>102</sup> Similarly, in my thesis, I explore the question what an embodied sensory approach to the everyday accessibility of law reveals and how this approach questions the very notion of what accessibility is. This study contributes to the evolving field of law and the senses, and what has been called the ‘sensory turn’ in law.

The objective of this study is to understand what happens to a well-intentioned and ambitious law in a courtroom. Scholarly work on what transpires in an adjudicatory site beyond doctrinal law, and the ethnographic engagements with the law reveal how law constitutes truth, or how adversarial conflicts are resolved and the law transforms.<sup>103</sup> Baxi, in particular argues how the law transforms beyond recognition. Taking the argument by Baxi on the transformation of doctrinal law in courts forward, I move beyond the debates on the ‘localisation’ of law to focus on the everyday and how what happens in everyday adjudicatory practices has a bearing on how litigants think of and perceive the law. What, moreover, qualifies as access and what does reaching the law mean. Scholars such as Austin

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<sup>101</sup> Mulcahy, *Legal Architecture*; Halder, “In and out of Court”; Rock, “Witness and Space in a Crown Court.”

<sup>102</sup> Hirschkind, *The Ethical Soundscape*.

<sup>103</sup> For more, see Baxi, *Public Secrets of Law*; Daniela Berti, “Courts of Law and Legal Practice,” in *A Companion to the Anthropology of India*, ed. Isabelle Clark-Decès (Wiley-Blackwell, 2011), 353–70; Daniela Berti and Anthony Good, *Of Doubt and Proof: Ritual and Legal Practices of Judgment* (Routledge, 2016). Srimati Basu, *The Trouble with Marriage: Feminists Confront Law and Violence in India* (Univ of California Press, 2015); Srimati Basu, “Playing Off Courts: The Negotiation of Divorce and Violence in Plural Legal Settings in Kolkata,” *The Journal of Legal Pluralism and Unofficial Law* 38, no. 52 (1 January 2006): 41–75, <https://doi.org/10.1080/07329113.2006.10756591>; Srimati Basu, “Judges of Normality: Mediating Marriage in the Family Courts of Kolkata, India,” *Signs* 37, no. 2 (2012): 469–92, <https://doi.org/10.1086/661712>.

Sarat and Thomas R. Kearne and Patricia Ewick and Susan Sibley<sup>104</sup> have written widely on experiences and perceptions of law; the practices and encounters with law in society; and what law is and means to people beyond positivistic definitions of law. To that extent, this study contributes the law and society debates, yet it departs in its approach by focusing theoretically on how the very nature of ‘everyday’ adjudicatory practices has a bearing on a progressive and ambitious law, such as the Domestic Violence Act. The repetitive and unremarkable notion of the everyday is thus critical to my analysis. Theoretically, and from the perspective of policy and advocacy debates on access to justice, I contribute to debates on access to justice, and the impossibility of having one single meaning for what ‘access’ means and to who and for what purposes, given the nature of law itself.

In its simplicity, ‘access’ to justice means the right of any person to invoke the legal process and receive a fair and just treatment, irrespective of the person’s social, cultural and economic factors. This implies that free legal aid should be available to those who cannot afford private lawyers, legal costs should be reduced or removed, and physical access to courts should be made easier. After these barriers are mitigated, access to legal forums will make justice more accessible. In India in particular, the discourse on access to justice has primarily focused on judicial delays, pendency in courts, corruption among judges, badly trained and unethical lawyers, frequent adjournments, recurrent transfers of judges that further delay a case and often require that arguments be repeated, the lack of clerical staff, a slow procedural system, and failure to adopt technology.<sup>105</sup> As a consequence, legal

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<sup>104</sup> For more see, Sarat and Kearns, *Law in Everyday Life*; Patricia Ewick and Susan S. Silbey, *The Common Place of Law: Stories from Everyday Life*, 1 edition (Chicago: University Of Chicago Press, 1998).

<sup>105</sup> The 230<sup>th</sup> Law Commission of India Report, 2009 argued for the establishment of High Court benches in states where there are no High Courts. Other reports and reform measures have focused on e-courts, adopting case management and digitisation, and calling for better tabulation and recording of cases in the lower courts, in order to assess and evaluate the problem. The 245<sup>th</sup> report, in particular, recommended the need to have a yardstick to measure whether the case was delayed or not. The report also recommended that data be provided that would lead to a more evidence-based reform rather than a focus on increasing the number of judges, and encouraged mediation in adversarial proceedings as a solution to resolve judicial backlogs. The recourse to informal courts and settlements, and their lack of effectiveness in administering justice has been highlighted by scholars. For more, see Law Commission of India (Report No. 245): Arrears and

reform efforts have focused on the reform of the civil and criminal justice system. Amendments to civil court procedures have been made, such as limiting the time and number of appeals and adjournments. In the criminal justice system, reform efforts have focused on setting up fast track courts, and the introduction of plea bargaining without addressing issues of delay, and the social and economic factors that contribute to pendency and overall inequity in the judicial system.<sup>106</sup> Other reforms have focused on mediation units set up in courts and the establishment of non-adversarial courts in rural India.

Pratiksha Baxi has pointed out how legal reform discourse focuses on the understaffing and underfunding of lower courts as the primary reason for judicial delay without considering how temporal delay in civil and criminal cases differ. Citing Upendra Baxi's work on the crisis in the Indian Legal System<sup>107</sup> from the 1980s, Pratiksha Baxi argues that delay is also a function of due process of law. She writes that while the presumption of innocence and the nature of procedural law may not be temporally efficient, its purpose is to be just. The language of competency and effectiveness in access to justice discourse has to be seen in the contexts of global economic growth and good governance.<sup>108</sup> The discourse on 'access' to 'justice' is thus under-theorised. I agree with Baxi that temporal efficiency alone does not assure justice. This thesis is thus an attempt to take some of the conversations on access to justice forward by exploring questions on what is a hearing, how is evidence assessed on a day-to-day basis and what is the fallout of temporal delay under the Domestic Violence Act in formal court proceedings. The diversion is from formal proceedings into formalised 'settlements'. I call these settlements formalised because they take place in 'the shadow of law'; even more importantly formalised settlements take place in an atmosphere of fear, a fear that the case in question may drag on endlessly. The problems that affected other women-centric laws still apply under the Domestic Violence Act,

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Backlog: Creating Additional Judicial (wo)manpower, July 2014; Law Commission of India (Report No. 230): Reforms in the Judiciary- Some Suggestions.

<sup>106</sup> Pratiksha Baxi, "Access to Justice and Rule-of (Good) Law: The Cunning of Judicial Reform in India," *Indian Journal of Human Development* 2, no. 2 (1 July 2008): 279–302, <https://doi.org/10.1177/0973703020080202>.

<sup>107</sup> Upendra Baxi, *The Crisis of the Indian Legal System* (Vikas Publishing House, 1982).

<sup>108</sup> Baxi, "Access to Justice and Rule-of (Good) Law," 10

as the Act is besieged by the same problems. Other than the evaluation of the Domestic Violence Act by NGOs funded by international organisations,<sup>109</sup> there has been little focus on how a new law and legal reform needs to pay attention to the everyday of the law.

I start with an ethnographic exploration of the court and the law, in this case, the lower court and the Domestic Violence Act, although it is also a focal point from where I depart to respond to questions relating to the interaction of everyday law and the everyday from a sensory perspective. In my study, women's first encounter with the law is an oral rendition of a doctrinal law by their lawyers. The preamble to the textual law that announces the intention of the law to provide for "more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family," and guarantees various reliefs is the first-time women hear the 'law'. That the case should be disposed of within a period of sixty days from the date of its first hearing is a spatio-temporal jurisdiction that all women cite.<sup>110</sup> This speech of the law is what philosopher J. L. Austin called a 'performative utterance', that is, stating and stipulating the law makes it true by just saying it. Thus, by 'naming' the victim and giving a platform to seek reliefs the doctrinal text of the Domestic Violence Act has a performative linguistic power that for both Austin and Bourdieu is law's constitutive power to legalise, formalise and affirm.<sup>111</sup>

### Thesis Structure

There are six chapters in this thesis. Chapters two, three, four and five are based on my fieldwork.

Chapter Two, "The Ethics of Listening and Narrating from the Field: Negotiating between 'the Perfect Victim' and 'the Half Lawyer'", is a brief overview of the Domestic Violence Act, presenting the history prior to its enactment, and the objective behind it. The chapter briefly lays down the main rights and guarantees of the Domestic Violence Act. The chapter sets the stage for what is to follow

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<sup>109</sup> For more, see Collective, "Staying Alive."

<sup>110</sup> Section 12 (4) of the Act stipulates that: "The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court."

<sup>111</sup> For more, see John Langshaw Austin, *How To Do Things with Words* (Harvard University Press, 1975); Pierre Bourdieu, "The Force of Law: Toward a Sociology of the Juridical Field," *Hastings LJ* 38 (1986), 805.



particularly from the perspective of how women using the law often straddle between playing victims or ‘half-lawyers’. In the chapter I foreground the discourse surrounding the supposed ‘misuse’ of the Act, and how the ‘misuse’ of the Act is a prevailing circulating discourse in courts and among lawyers and litigants that accuses women of manipulating the law, and falsely accusing the man concerned and his family. I shed light on how stories of misuse travel, and how narratives of violence have to be formulated not to demonstrate ‘truth’, but what kinds of narratives are suitable to specific acts of violence.

Chapter Three, “Spatial Arrangement and Hearing in a Courtroom”, as the title indicates, is about the multiple meanings of hearing, and how one attains legibility in law. I reflect on the kind of hearing that the law provides, in opposition to what women seek in the courtroom and what they perceive as ‘hearing’. How does this hearing stand in contrast to the right to a fair trial? I demonstrate how the courtroom spatial hierarchy determines to whom the proceedings are audible, and for whom the proceedings are beyond reach. The hierarchal spatialisation in a courtroom itself denies audibility when the placing of litigants on the margins of the courtroom makes the proceedings themselves inaudible. I argue that access to ‘hearing’ eludes women litigants when they struggle to comprehend both the language of the law and how language itself shields hearing. At the same time, the ‘hearing’ that the law promises either never arrives or arrives too late for the women litigants.

In Chapter Four, “How Do Lawyers Know?” I discuss the role narratives play in presenting evidence, and how the stories women tell bear the imprint of the law and its affinity to the chrono-temporal precision of what events should follow what. When evidence is questionable or does not sound quite right the law notes that a story has been mis-told.<sup>112</sup> What came ‘after’ or ‘before’ in the story, or how the ‘file’ is privileged over oral narrations in cross-examinations are some of the questions I explore through ethnographic vignettes. The file (and the record of events) occupies both subject and object positions. The production of evidence demands coherence and consistency, and this is measured in the temporal placing of ‘befores’ and ‘afters’. The coherence and consistency the law demands stands in contrast with how stories are told, and how story-telling is a subjective experience of both events and time and their happenings. The sensing and happening of these events do not remain static, but

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<sup>112</sup> Brooks, “Narrative Transactions –Does the Law Need a Narratology.”

keep changing for the women litigants in their constant re-telling. I argue that the seeing and knowing lawyers refer to in identifying credible evidence of a 'victim' is based on how narratives are told and retold by women litigants of domestic violence, and whether it meets their sensorial normativity of what stories of violence should sound like.

In Chapter Five, "‘Being Stuck’: Delay and Waiting", I examine judicial delay through the waiting experiences of women litigants. I further analyse the feeling of 'nothing happens' described by women litigants from the perspective of the spatio-temporal experience of waiting in courts. I specifically analyse the different temporalities and how judicial delay is measured by the law, and how this differs from what women consider delay and 'reasonable time'. This delay in receiving reliefs, and the waiting in court has an impact on women's experience and perception of access to justice.

In Chapter Six, I summarise the key arguments in the thesis.

## Chapter Two

### **The Ethics of Listening and Narrating from the Field: Negotiating between the ‘Perfect Victim’ and the ‘Half Lawyer’**

This thesis, as previously argued, is not a specific study of the Domestic Violence Act itself or the ramifications of the Domestic Violence Act on the lives of women using the law, although, my study does shed light on both the use of the law and how it has an impact on women’s lives. The Act serves as the backbone to my study on how women ‘sense’ the law. Like the aural, spatial and temporal encounter with the Act that takes place in courtrooms, the Domestic Violence Act itself is a necessary doctrinal experience, without which the experiences I narrate of women’s engagement and encounters with law would ring false, since women first learn what the Act is, does and can do from what the written Act stipulates and guarantees. Their first encounter with the Act is textual. That is the decisive factor in using or not using the Act, whether in conjunction with other laws or the Act alone, and it is an outcome of what the Act promises. This chapter therefore is a prelude to understanding what follows in the later chapters, and how and why women litigants who use the Act experience the Act differently in courtrooms from the Act’s textual promise. In this chapter I provide a brief history of the Domestic Violence Act and an overview of the Act, and what the Act guarantees and secures for women applicants. I will trace back what led to the enactment of a civil law, in addition to other existing laws. This brief history of the Act is critical when comprehending the hope and expectation with which the Act was drafted and enacted. It is also required to understand the failure of the Act in meeting some of its objectives of quick relief, at least with respect to questions relating to ‘access to justice’, as the Act struggles through the adjournments and delays that are commonplace in Indian courts.

The drafting and enactment of the Domestic Violence Act was fiercely contested within the women’s movement itself, with a few women’s organisations and prominent leaders either in favour of a

new civil Act or challenging the need for it. Would more laws<sup>113</sup> solve the problem at hand, namely the problem of a protracted legal system? Or, is there a need for a separate law that guarantees women equal rights to property and economic resources within marriage? As feminists have argued, this is the primary reason for women's status in society. These were critical questions raised in meetings held by civil society organisations to discuss the draft law. As the chapters that follow will reveal, the Domestic Violence Act despite its intentions to provide quick relief is slowed down for the same reasons – a slow and laborious court system. Likewise, similar to other women-centric laws, the Domestic Violence Act faces similar challenges, that is, the narrative of 'misuse' of the Act. I address this narrative of misuse of the Act, and highlight some of the landmark judgements that in the initial years of the Act viewed certain provisions, rights and reliefs with distrust, a problem other women-centric laws have faced too. This despite many scholars underscoring the fact that the majority of women refrain from using formal state law in times of need. If they do, it is only after other efforts and measures have failed, such as family intervention. Scholars studying women's courts in India, like Sylvia Vatuk and Livia Holden, have pointed out that out of court arrangements and unofficial strategies are preferred by women despite women-friendly laws, as opposed to the formal state law which entails legal costs, a long wait, and shame in resorting to legal recourse concerning an intimate family matter.<sup>114</sup> It is only when they are unable to reach a resolution through informal means that women turn to 'official' laws.<sup>115</sup>

For this thesis, I have not exhaustively analysed the appellate court verdicts, instead I have briefly examined them in order to draw attention to the dominant narratives on women-centric laws and the suspicion with which they are received in courts. I will start the chapter

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<sup>113</sup> All matters relating to marriage, adoption, inheritance and divorce are governed by personal laws in India. The Domestic Violence Act provides protection to all women irrespective of religion.

<sup>114</sup> Sylvia Vatuk writes that for Indian women approaching the court is the last resort, most women preferring informal intervention rather than going to court. Sylvia Vatuk, "The 'Women's Court' in India: An Alternative Dispute Resolution Body for Women in Distress," *The Journal of Legal Pluralism and Unofficial Law* 45, no. 1 (March 2013): 76–103, <https://doi.org/10.1080/07329113.2013.774836>.

<sup>115</sup> Livia Holden, *Hindu Divorce: A Legal Anthropology* (Aldershot: Ashgate Publishing Ltd, 2008).

with a brief overview of the Domestic Violence Act and what preceded its enactment, and provide an overview of the Act. The outline of the Act specifies what are its primary features, definitions and remedies that it seeks to redress. The mirroring of an internationally modelled law in India and how it was transformed in local court settings were among my primary reasons for studying the Act. I briefly mention this in the Introduction, but it is worth repeating here too because it is closely linked to the history of the Act. From there, I move to ‘perfect-victim’ discourse, drawing on critical analysis by anthropologists of rights-based and human rights discourse. I argue that the legal subjectivity of the ‘perfect-victim’ is closely tied to the narrative of misuse. I apply Charles Briggs’s ‘communicable cartography’ to analyse the narrative of ‘misuse’ and I particularly draw on his argument that narratives of violence have to be formulated in order to be believable. Briggs critically observes how narratives of violence are interpellated by mainstream discourses and how they travel infectiously as stories about stories, hence achieving a degree of truth.<sup>116</sup> I use his argument in particular to argue how narratives of misuse of the Act acquire an infectious resonance from court hallways to the media and among women litigants themselves. Stories of violence mandate dramatic revelations of brutally abused women, while stories of misuse of the Act by women stem from failing to meet the ‘perfect-victims’ threshold. Briggs argues that specific acts of violence recruit discourses specific to it, as well as familiar modes of speaking about violence. Thus, he urges researchers to see beyond these ‘communicable cartographies’, and for us to listen and to narrate narratives that disrupt our ways of seeing and listening.

### **Brief history of the Domestic Violence Act and its enactment**

Law as an instrument of ‘social change’ has been central to the women’s movement both in pre-independent and post-independent

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<sup>116</sup> For Louis P. Althusser, the interpellation process is complete when subjects are complicit in their own domination. Althusser gives the example of a police officer hailing “Hey, you there” and in response the individual accepts and becomes a subject. The interpellation process relies on the acknowledgment of the individual and response to subjecthood. For Judith Butler, on the other hand, interpellation precedes the hailing. The hailing by the nurse “It’s a girl” for Butler is a performative utterance in the Austinian sense, where the utterance is assigning sex and gender to the body and constitutes the subject. For more, see Louis Althusser, *Essays on Ideology* (Verso, 1976); Judith Butler, *Excitable Speech: A Politics of the Performative* (New York: Routledge, 1997); Austin, *How To Do Things with Words*.

India.<sup>117</sup> From the 1970s onwards, the women's movement rallied to introduce new laws and reform existing laws concerning violence against women; this included domestic violence and rape law reform. It was in this period that a new provision protecting women from cruelty was introduced in the Indian Penal Code. Section 498A under the Indian Penal Code, 1860 addressed the issue of cruelty against women, and defined cruelty against the wife by a husband and his family to include both physical and mental cruelty. Cruelty under Section 498A is defined as including any wilful conduct that is likely to drive a woman to commit suicide or cause grave harm or injury or endanger her life or health, mental or physical.<sup>118</sup> Writing on Section 498A, Basu critically notes that ultimately, women lawyers found that the purpose with which the criminal provision was used was to negotiate civil remedies of maintenance,<sup>119</sup> custody issues, as opposed to dealing with the question of violence. It is to address this gap that the Domestic Violence Act was enacted.<sup>120</sup> Women's organisations observed that what women primarily want are civil remedies, such as economic rights and an independent shelter to escape the cycle of violence and avoid being left destitute, as opposed to penalisation of their husbands. The focus in enacting a civil law therefore was primarily to provide civil remedies to all women irrespective of religion

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<sup>117</sup> Shilpa Phadke, "Thirty Years On: Women's Studies Reflects on the Women's Movement," *Economic and Political Weekly* 38, no. 43 (2003): 4567–76.

<sup>118</sup> Under Section 498 A of the Indian Penal Code, a husband or relative of husband subjecting a woman to cruelty can be punished with imprisonment for up to three years and a fine. Cruelty is defined as: "(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand." For more, see "Section 498A in The Indian Penal Code," <https://indiankanoon.org/doc/538436/>.

<sup>119</sup> Section 125 of the Code of Criminal Procedure, 1973 was drafted specifically to prevent destitution. The Section provides for an order of maintenance to be granted if any person having sufficient means neglects or refuses to maintain his wife unable to maintain herself, his parents unable to maintain themselves and legitimate or illegitimate minor children.

<sup>120</sup> Basu, *The Trouble with Marriage*.

and enact a secular law that protects women, and to give domestic violence a legal name and legal definition.<sup>121</sup>

Thus, the history of the Domestic Violence Act is intimately linked to the women's rights movement and the fight against violence to women. The enactment of the Domestic Violence Act also coincides with the proliferation of NGOs,<sup>122</sup> global networks and global exchange of ideas. If anything, its enactment is evidence of the strength and power non-governmental organisations exercise both locally and globally.<sup>123</sup> The Act was drafted by women's rights organisations and was successfully lobbied in the Parliament by forging networks with the State Women's Commission<sup>124</sup> and Members of Parliament to enact a new law drafted solely by them. Modelled after the UN Model Code on legislation to prevent violence against women, the Act provides a detailed and comprehensive definition of domestic violence that was adapted to and for the Indian context.<sup>125</sup> The debates in the Parliament prior to its enactment argued that the state's commitment to women's rights and the responsibility to enact the new

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<sup>121</sup> The Act gave domestic violence a legal name and definition. Indira Jaising argued that "an injury was not an injury until it had a legal name and definition." Jaising and her NGO played a formidable role in drafting the new civil law and in assessing its impact post-enactment. For more, see Indira Jaising, "PERSPECTIVES Concern for the Dead, Condemnation for the Living," [http://www.academia.edu/12271214/PERSPECTIVES\\_Concern\\_for\\_the\\_Dead\\_Condemnation\\_for\\_the\\_Living](http://www.academia.edu/12271214/PERSPECTIVES_Concern_for_the_Dead_Condemnation_for_the_Living).

<sup>122</sup> The size of the non-profit sector in India has been calculated as 1.2 million organisations. For more, see S. S. Srivastava and Rajesh Tandon, "How Large Is India's Non-Profit Sector?," *Economic and Political Weekly* 40, no. 19 (2005): 1948-52.

<sup>123</sup> The current Government has banned foreign funding to organisations that are specifically critical of government policies or human rights and environmental issues. For more, see Deborah Doane, "The Indian Government Has Shut the Door on NGOs," *The Guardian*, 7 September 2016, <http://www.theguardian.com/global-development-professionals-network/2016/sep/07/the-indian-government-has-shut-the-door-on-ngos>.

<sup>124</sup> The national commission for women and the state commissions for women are statutory bodies set up to promote and protect the rights of women and to advise the government on policy. They were set up under the provisions enshrined in the Constitution for the protection of women.

<sup>125</sup> Provisions relating to dowry harassment is one such example of how the Act has been adapted to provide protection for women in India.

Act was framed in the language of Constitutional rights that guarantees equality before the law and equal protection of laws, and prohibits discrimination on the grounds of religion, race, caste, sex or place of birth. While the ratification of the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>126</sup> and the guarantee that State parties are duty-bound to protect the rights of women found a certain rhetorical strength, it was the Constitutional guarantee of equality irrespective of sex or religion<sup>127</sup> accorded under Article 14 and 15 of the Constitution that NGOs referred to when campaigning for the new Act.

International human rights conventions and movements have also played a central role in campaigning for the law and in pressuring the government. In fact, the Indian women's movement appropriated the anthem of 'women's rights as human rights' from the global movement that took centre-stage in the 1990s, specifically after the Vienna Conference on Human Rights in 1993 and the UN's Fourth World Conference on Women in Beijing in 1995. In Beijing it was argued that violence against women has to be recognised as a human rights violation because it impedes women's enjoyment of essential rights that are fundamental human rights, and a failure on the part of States to protect women from violence qualifies as a human right's failure.<sup>128</sup> This argument was critical for the Indian women's

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<sup>126</sup> The CEDAW's 12th general recommendation required "the States parties to act to protect women against violence of any kind occurring within the family, at the work place or in any other area of social life". For more, see OHCHR "Convention on the Elimination of All Forms of Discrimination against Women," <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>.

<sup>127</sup> Under Article 14 of the Indian Constitution women are guaranteed equality before the law and the equal protection of laws. Article 14 prohibits discrimination on the grounds of religion, race, caste, sex or place of birth, while Article 15 prohibits discrimination on grounds of sex or religion. Under Article 15 (3) the State can take special measures for women and children.

<sup>128</sup> For more, see Ratna Kapur, "The Tragedy of Victimization Rhetoric: Resurrecting the Native Subject in International/Postcolonial Feminist Legal Politics," SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, 17 August 2005), <https://papers.ssrn.com/abstract=779824>. Peggy Levitt and Sally Merry, "Vernacularization on the Ground: Local Uses of Global Women's Rights in Peru, China, India and the United States," *Global Networks* 9, no. 4 (2009): 441-461.



movement to persuasively claim that domestic violence was not a private matter, but a public issue that requires State intervention – a mindset that the women’s movement had been fighting since the 1970s.<sup>129</sup>

Ultimately, the passing of the new law protecting women from domestic violence achieved both economic rights and the right to reside in a shared household, a right that would be more difficult to achieve in personal laws as that would mean confronting a highly politicised debate on personal law reform and the Uniform Civil Code (UCC).<sup>130</sup> In India, different communities (such as Hindus, Muslims,

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<sup>129</sup> Kapur, “The Tragedy of Victimization Rhetoric.”

<sup>130</sup> Under the Indian Constitution Article 44, a Directive Principle directs the State to enact a Uniform Civil Code that is a uniform set of family laws that governs marriage and the rights between parties, the custody of children, divorce and inheritance. It is, however, merely a directive principle. The demand for a Uniform Civil Code was articulated in pre-independent India. As the political debates on building a new nation state took centre stage, the women’s question was relegated to the margins. The 1970s and 1980s particularly saw a rise in the saffronisation (right-wing Hindu nationalist views) of the debate on the uniform civil code. This was followed by the Shah Bano judgement in 1985, where an all-Hindu judiciary commented on a Muslim woman’s right to maintenance and on the Koran aroused anger and suspicion within the Muslim community. This development led to a rethinking and reframing of the women’s agenda. Since then, the debate on the uniform civil code has been treated cautiously by the women’s movement recognising the danger in the saffronisation of the debate and its effects on other minority communities. The discussions on reforms of laws moved away from a demand for the UCC, and instead, reforms within personal laws and harmonisation between different sets of laws that are in consonance with the equality provisions of the Constitution have been ongoing.<sup>130</sup>

Post-independence a family code for Hindus was enacted under the Hindu Marriage Act, 1955. There is also a secular law under the Special Marriage Act, 1954 under which marriage is secular and takes place outside of religious rituals so the parties are governed by the said law, and not by their personal laws in matters of divorce and for succession governed by the Indian Succession Act, 1925. The tension between the two Constitutional provisions of equality and secularism that guarantees legal pluralism without denial of equality has since then been widely argued as essential to the Indian state. That women negotiate multiple laws, both codified and outside of the legal framework, has been widely argued by scholars. See, for instance, Basu, “Judges of Normality.” That the UCC is the only path to gender-justice, specifically for minority women, has been widely contested by many women’s organisations, who have challenged the common category of ‘women’ as

Christians, Parsis, Jews) have different personal laws based on religion that govern matters relating to marriage, the dissolution of marriage, custody and adoption, and inheritance. The Domestic Violence Act, on the other hand, successfully circumvented the discussion on reform of existing laws and enacting a uniform civil code, by broadly defining ‘domestic violence’ and including the right to reside under its rubric – the right to reside in particular is one of its chief successes.<sup>131</sup> The Act is now ten years old, and what it essentially did was open the gates for similar reforms in personal laws and a broader interpretation of cases in personal laws since the rights are already available under the Act. Even though the rights are not ‘permanent in nature’<sup>132</sup> they are already being granted to women irrespective of what rights they may have under their respective personal laws.

### Overview of the Act

The Domestic Violence Act came into effect on 26 October 2006. The statements and objects of the Act specifically state that the law is “for more effective protection of the rights of women guaranteed

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advocated by the UCC. The common category strips away the social-cultural contexts of the personal laws, and the complex negotiations women make at the local and community level outside of the formal state law. Nonetheless, the Domestic Violence Act in many respects is a path-breaking law that provides exhaustive remedies to all women irrespective of group or community-specific rights. For the purpose of this chapter, I will not trace the debates on the uniform civil code and the aftermath exhaustively since they are beyond the scope of this thesis.

For more see, Flavia Agnes, “Redefining the Agenda of the Women’s Movement within a Secular Framework,” *South Asia: Journal of South Asian Studies* 17, no. sup001 (1 January 1994): 63–78, <https://doi.org/10.1080/00856409408723216>. Flavia Agnes, *Law, Justice, and Gender: Family Law and Constitutional Provisions in India* (OUP India, 2011). Flavia Agnes and Shoba Venkatesh Ghosh, *Negotiating Spaces: Legal Domains, Gender Concerns, and Community Constructs; in Association with Majlis Legal Centre* (New Delhi: Oxford University Press, 2012).

<sup>131</sup> The relief under Section 125 of the Criminal Procedure Code is similarly accessible to all women irrespective of community based laws.

<sup>132</sup> The right to reside is not a right that assigns any right to property to women nor does it adjudicate on any dispute relating to movable or immovable property. It only grants women the right to reside in a shared household that she may have lived in with, or continues to live with, the respondent.

under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto". Unlike the criminal provision under the Indian Penal Code, the Domestic Violence Act is a civil law that is filed before the Judicial Magistrate of the first class or the Metropolitan Magistrate within whose local limits either parties reside or are gainfully employed or where the domestic violence has allegedly been committed. The Magistrates' courts,<sup>133</sup> are lower courts in the criminal side, as opposed to the family court where cases relating to maintenance, custody and divorce are decided.<sup>134</sup>

The Domestic Violence Act is the first law that named and defined 'domestic violence.'<sup>135</sup> As previously mentioned in the Introduction, the Act provides for a wide definition of what constitutes domestic violence, thus taking cognizance of the nature and depth of violence that women can suffer. This includes both acts of omission or commission or conduct meted out by the respondent that include physical and mental abuse, sexual abuse, verbal and emotional abuse, repeated threats, and economic abuse.<sup>136</sup> Under

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<sup>133</sup> Under the Act, violation of a protection order granted by the Magistrate is deemed to be a punishable offence. A protection order can restrict the respondent from contacting the woman and/or children or entering the property.

<sup>134</sup> The Family Court Act was enacted in 1984 in order to enable easy and informal access to courts, and provide reliefs relating to divorce and custody matters under a single court. Family Courts were specifically aimed to establish lawyer-free courts, where joint counselling was adopted, so as to arrive at speedy settlements. The utopian establishment of Family Courts where mediation without the interference of lawyers is one such illustration of the nature of settling, and the failure of justice somehow being more accessible.

<sup>135</sup> Jaising, "PERSPECTIVES Concern for the Dead, Condemnation for the Living."

<sup>136</sup> The definition of domestic violence is stipulated under Section 3 of the Act as: "any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it – (a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or (b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or (c) has the effect of threatening the aggrieved person or any person related to her by any conduct

Section 2 (q) of the Act, a respondent is defined as “any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act”. This also includes the right to file a complaint against a relative of the husband or male partner. Economic violence is widely defined under the law to include deprivation of economic or financial resources which the woman is entitled to under any law or custom, or disposal of movable or immovable assets with the intention of depriving that woman. This includes denial of access to a shared household.

In an attempt to provide all reliefs under the same law, and account for the wide variety of abuse women suffer in intimate relationships, the Act also includes dowry demands despite a separate law that criminalises dowry demands.<sup>137</sup> The Act was drafted with the objective to provide protection and relief to all women in ‘domestic relationships’<sup>138</sup> who have suffered violence or continue to suffer from violence irrespective of the religion they belong to. Domestic relationship under the Act is defined to mean two persons who live or at any point of time have lived together in a share household. This includes women in marriage, live-in relationships or relationship in the nature of marriage, daughters, and other family members. Prior to this, women whose marriages were not registered or who lacked legally acceptable proof of their marriage, or the marriage ceremony failed to meet the legal requirements of what constitutes a valid marriage, could

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mentioned in clause (a) or clause (b); or (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person. The explanation to the section provides illustrations of violence, that is, physical abuse, sexual abuse, verbal and emotional abuse, and repeated threats to cause physical pain to any person in whom the aggrieved person is interested, and economic abuse.

<sup>137</sup>The Dowry Prohibition Act, 1961 penalises both the act of giving and taking dowry. Another relevant provision is Section 304B in the Indian Penal Code, which concerns prosecution of a husband and in-laws if a wife dies as a result of burns, or any other injury, within seven years of marriage, provided it can be shown that she was subjected to cruelty, or harassment by the husband and in laws on account of a dowry demand.

<sup>138</sup> The Act can only be used by women against anyone she has shared or is sharing a domestic relationship with. This includes “two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.”

not seek relief under personal laws since the validity of the marriage itself was suspect. With the Domestic Violence Act, women can fall under the rubric of 'live-in relationship', thus taking away the burden of proving a valid marriage to seek relief under the law. The only requirement is that live-in relationships should have been in the nature of marriage, that is, the parties had the intention to live like husband and wife.

The primary purpose of the Act was to provide civil remedies that women in violent relationships needed in order to move out of violent homes, rather than penal consequences that failed to remedy the situation of women who were also often economically dependent on the relationships that were violent. The Act provides for a wide variety of civil reliefs: protection and restraining orders (Section 18) that prevent and stop violence,<sup>139</sup> the right to monetary relief (Section 20), the right to reside in a shared household and prevention from dispossession of the shared household (Section 19), custody orders (Section 21) and compensation orders (Section 22). This includes the Magistrate's power to grant an interim and ex parte order as deemed fit (Section 23). A monetary order takes into consideration loss of earnings and medical expenses incurred owing to violence. A compensation order, on the other hand, accounts for emotional and mental distress caused to the aggrieved person owing to violence. The court can grant injunctive orders. Injunctive orders in particular are to prevent and stop violence and prevent women from being evicted from the household. The right to reside under Section 19 of the Act allows the Magistrate to restrain the respondent from dispossessing the woman from the shared household, irrespective of ownership of property; remove the respondent from the property or restrain him or other relatives from entering; and restrain from alienating or disposing of the shared household or encumbering the same or renouncing his rights in the shared household or direct respondent to provide an alternate accommodation for the woman.

The right to reside in a shared household, including women in 'live-in relationships', are some of the provisions that are triumphs of the law. Both the right to reside and 'live in relationships' have attracted attention of the apex court. The definition of a 'shared

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<sup>139</sup> A protection order to prevent domestic violence can be granted. An order restraining the respondent from contacting the aggrieved person or contacting children or entering the premises of the shared household can also be granted.

household’ was challenged in *S.R. Batra v Taruna Batra*,<sup>140</sup> where the verdict ruled that the wife did not have a right to reside in a shared household where the husband had no ownership rights in the property, and the property could not be considered a shared household, in accordance with the definition of the Act.<sup>141</sup> In *D.Velusamy v D. Patchaiammal*,<sup>142</sup> the apex court examined the definition of a ‘live-in relationship’ and a relationship ‘in the nature of marriage’. The sentiment the right granted to a woman in a live-in relationship evokes is illustrative in the words of the apex court that stated: “If a man has a ‘keep’ who he maintains financially and uses mainly for sexual purpose and/or as a servant it would not, in our opinion, be a relationship in the nature of marriage.” The lawyers I interviewed echoed similar sentiments about how supposedly ‘corrupt’ and ‘shameless’ women manipulated and abused an Act that had been drafted to prevent ‘real’ violence.

### **Procedure under the Act**

Under the Act, proceedings in court start from the date of the filing of the application. Typically, along with the application, an affidavit seeking interim relief is also filed. After admission of the application, the court orders notice to be served on the respondent to appear on the first date of hearing or respond to the application. As per the Act, the notice should be served within two days of the admission of the application, though that timeline is rarely met. Similarly, even though under Section 12 (4) of the Act, the first date of hearing should “ordinarily not be beyond three days from the date of receipt of the application in court”, it typically takes a month or more for the first date of hearing to be set from the time of application. The trial begins with the first date of hearing, where the parties and their respective lawyers appear before the court, and the respondent is provided time to file a written reply. After the respondent responds with a written reply, a date for interim arguments is set. This stage usually takes up to a minimum of three to four months, as per lawyers,

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<sup>140</sup> “S.R. Batra And Anr vs Smt. Taruna Batra on 15 December, 2006,” <https://indiankanoon.org/doc/594165/>.

<sup>141</sup> In a case filed in the Bombay High Court, the court granted a woman the right to reside irrespective of whether she had a right, title or interest in the shared household. For more, see “Roma Rajesh Tiwari vs Rajesh Dinanath Tiwari on 12 October, 2017,” <https://indiankanoon.org/doc/184037116/>.

<sup>142</sup> “D.Velusamy vs D.Patchaiammal on 21 October, 2010,” <https://indiankanoon.org/doc/1521881/>.

even though the Act stipulates a shorter period. Usually, interim orders are passed between three to six months, based on submission of affidavits. In all the cases I followed, interim relief was granted on average within four months. On the first date of hearing, most respondents seek for another date to respond to the application. After the written response by the respondent, evidence in the form of affidavits is taken by the court on another date or hearing. Interim orders are typically passed by the court after this. It is rare for courts to listen to oral arguments for an interim application. Usually, interim reliefs are granted without arguments as such a process would delay the passing of interim orders and would defeat their purpose. As per the lawyers, the case considerably slows down after the passing of interim orders.

After interim relief is granted, evidence is produced. This usually includes copies of the marriage certificate, birth certificates of children, and any medical or non-cognizable complaint<sup>143</sup> filed with the police as evidence of domestic violence. The Court cross-examines the woman and the respondent, and any other witnesses to the violence, and this is followed by final arguments. With respect to any claims made, evidence must be produced in court by relevant parties, for instance in the case of physical violence, if there are any police reports or circumstantial evidence or neighbours or friends who can be cross-examined by the court on the violence claimed. Given the fact that violence in such cases is often of an intimate nature, evidence by witnesses in most cases is difficult to present and courts rely on any reports made by the woman to the police or the protection officer. A final order is passed after the completion of the final arguments, a separate date being fixed for each stage of the proceedings.

As the Act is designed to provide quick reliefs, both in terms of interim orders and final orders, Section 12 (5) stipulates that a case should be closed within sixty days of filing the case. In practice, the ambitious temporal closure of the case within sixty dates has been

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<sup>143</sup> A non-cognisable complaint is often made by women at a police station. The police officer in charge will summarize the complaint made by the woman in writing and give her a copy of the complaint. The complaint is often appended as evidence at the time of filing an application. Since it is a non-cognisable offence, or an NC as it is commonly referred to, the police merely make an entry in the police station diary but do not make any inquiry unless directed by the Magistrate. The report is usually presented in court as evidence of the continued violence the woman has been subjected to. In the case of an NC, no arrest can be made without a warrant.

impossible to achieve. As discussed in later chapters, cases under the Domestic Violence Act take on average close to three years to complete, though this is still a shorter time than a case filed in a Family Court would most likely take. By completion and closure here, I do not mean only cases where the court has granted final orders, but often cases that have been ‘settled’ by parties themselves.

At each stage, the Magistrate dictates the proceedings to the court transcriber in English, irrespective of the language used during the trial, and it is in the Magistrate’s words that a summary of what transpired in the courtroom is recorded. No audio or video recordings are made at any stage. In the case of a domestic violence case filed under the Domestic Violence Act, given that it is a civil law, the law does not expect ‘proof beyond reasonable doubt’. Instead it relies on the principle of ‘balance of probabilities’, where the court assesses claims and relies on evidence of what most likely took place, given the facts and circumstances of the case.

The reason why a range of remedies were provided under one Act was to limit the use of multiple laws and limit the use of different legal forums. Hence, multiple remedies can be sought under a single proceeding and in a single court. The thinking behind the said provision was to provide speedier and easier access to justice.<sup>144</sup> According to the lawyers I followed and interviewed, at present the Act is predominantly used to claim monetary orders as well as the right to reside in the shared household. In order to ensure easy lawyer-free use of the Act, the Act provided for enforcement protection officers to facilitate easier access to courts. However, reviews of the Act by various NGOs have highlighted the lack of allocated funding at the state level. One of the major infrastructural problems concerning the implementation of the Act has been that no independently appointed protection officers have been assigned to assist in the legal process.<sup>145</sup>

### **Localising global norms**

My initial interest in the Domestic Violence Act was twofold. Firstly, I wanted to see how an internationally modelled law was localised in Indian courts, and secondly, I was interested in witnessing

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<sup>144</sup> Indira Jaising, Asmita Basu, Brototi Dutta, *Handbook on Law of Domestic Violence* Lawyers Collective, LexisNexis, Butterworths Wadhwa 2009.

<sup>145</sup> For more, see Collective, “Staying Alive.”



how the Act was transformed in courts. How did this law translate global ideas of human rights and women's rights' violation into local settings, and more specifically into courtrooms? How do these ideas of universal human rights' travel and to what extent are they transformed in transit? Do they create fissures? Global transnational flows are dictated by international funding organisations and agencies, the Domestic Violence Act being modelled on the UN Model Law on Violence Against Women. The law, adopted from an international model, is contextualised in the Indian context, and definitions of violence are also specific to the Indian context.<sup>146</sup>

Questions relating to transnational flows of human rights' norms, and how they are transformed and transcend their original meanings are not new, and previous scholarly works have addressed these questions of global-local flows.<sup>147</sup> The appropriation of human rights' language, Levitt and Merry write, serves several goals. It provides a certain legitimacy when campaigning with States, and builds networks and "an air of global connectedness, modernity, and progress"<sup>148</sup>. Since the ratification of the Universal Declaration of Human Rights, human rights and human rights' language has spread both in India and globally. Human rights language was used, too, as the primary vocabulary for articulating women's rights.

In anthropologists Peggy Levitt and Sally Engle Merry's multi-sited study in Peru, India and China on the 'vernacularisation' of global ideas into local language, they write about how global human rights' ideas are appropriated in local language and are contextualised to make them culturally relevant, and how in turn the local ideas then assume a language of their own.<sup>149</sup> Levitt and Merry's study has shown that 'vernacularisation' is a two-way street. Global ideas are legitimated by acquiring a local tongue, making these ideas easier to advocate and implement them. At the same time, local ideas and the appropriation

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<sup>146</sup> The Domestic Violence Act was modelled after UN Model Code on violence against women. The definitions of violence though are localised and made relevant in the Indian context. For instance, harmful practices relating to dowry harassment are included in Section 3 (b). They include verbal abuse about not having a male child or forcing a woman to marry against her will.

<sup>147</sup> See, for example, Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Cornell University Press, 1998).

<sup>148</sup> Levitt and Merry, "Vernacularization on the Ground," 443.

<sup>149</sup> Levitt and Merry.

of global norms travel beyond local borders, acquiring new meanings and relevance. Maya Unnithan and Carolyn Heitmeyer<sup>150</sup> have argued that there is no single translation of human rights, instead there are multiple translations that are selectively appropriated to meet specific goals. Moreover, the manner in which human rights is envisioned and produced may be guided by different ideological and practical realities.

The global flows of ideas, knowledge and capital have been widely written about,<sup>151</sup> including the globalisation of human rights norms and the universalisation of human rights narratives,<sup>152</sup> and how this migration of ideas is actualised through global networks bound by common goals.<sup>153</sup> The proliferation of NGOs spawned by internationally funded organisations, such as the World Bank, the Ford Foundation, and global-local networks is key for the migration of these ideas, and the United Nations is also partly responsible for the rhetorical strength human rights has attained.<sup>154</sup> Both Mark Goodale and Sally Engle Merry have problematised the binary nature of the global/local debate, where the global-local implies a vertical spatial metaphor where the global is above and the local is below. This top-

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<sup>150</sup> For more, see Maya Unnithan and Carolyn Heitmeyer, "Challenges in "Translating" Human Rights: Perceptions and Practices of Civil Society Actors in Western India," *Development and Change* 45, no. 6 (1 November 2014): 1361-84, <https://doi.org/10.1111/dech.12135>.

<sup>151</sup> For more, see Arjun Appadurai, "Disjuncture and Difference in the Global Cultural Economy," *Theory, Culture & Society* 7, no. 2 (1990): 295-310.

<sup>152</sup> For more, see Richard Wilson, ed., *Human Rights, Culture and Context: Anthropological Perspectives*, Anthropology, Culture, and Society (London; Sterling, Va: Pluto Press, 1997); Mark Goodale and Sally Engle Merry, eds., *The Practice of Human Rights: Tracking Law between the Global and the Local* (Cambridge; New York: Cambridge University Press, 2007).

<sup>153</sup> Manuel Castells, "The New Public Sphere: Global Civil Society, Communication Networks, and Global Governance," *The ANNALS of the American Academy of Political and Social Science* 616, no. 1 (1 March 2008): 78-93, <https://doi.org/10.1177/0002716207311877>; Manuel Castells, "Materials for an Exploratory Theory of the Network Society," *The British Journal of Sociology* 51, no. 1 (1 March 2000): 5-24, <https://doi.org/10.1111/j.1468-4446.2000.00005.x>.

<sup>154</sup> For more, see William F. Fisher, "Doing Good? The Politics and Antipolitics of NGO Practices," *Annual Review of Anthropology* 26, no. 1 (1997): 439-64, <https://doi.org/10.1146/annurev.anthro.26.1.439>.

down approach presumes that there are two levels where this human rights' discourse unfolds.<sup>155</sup> Brian Larkin has also critically observed how global cultural flows privilege the centrality of the West,<sup>156</sup> despite the fact that the centre and the periphery are constantly shifting and being re-defined. As anthropologists Arjun Appadurai and Carol A. Breckenridge have observed, these global flows emerge from many centres and flow into many peripheries.<sup>157</sup> Mark Goodale, for his part, suggests that the 'betweenness' of human rights discourses unfolds in locations that are difficult to pin down.

### **Between the Perfect Victim and the Half Lawyer**

In the last few decades, the Domestic Violence Act, and Section 498 A in particular, have acquired a 'draconian' image as laws that rip apart families, being employed as 'a tool to harass husbands'. Stories of the misuse of Section 498A and the Domestic Violence Act in the media and in court corridors abound. The oft-repeated story dramatically unfolds with an avenging wife sending her hapless husband and his parents to prison, or in the case of the Domestic Violence Act, the husband and his family being evicted from their own home as the wife is granted the right to live in a shared household. Section 498A has come to connote, argues Basu, a fraudulent or cheating person. Yet, what qualifies as a misuse of the law, and what is the legitimate use of the law is rarely defined.

The discourse on both civil and criminal law thus oscillates between 'real victims' and 'bogus' women. These narratives of misuse travel across genres and institutional borders. They acquire what Charles Briggs has called an 'infectious iterability' moving swiftly from media, to courtrooms, to litigants. Briggs refers to this as 'communicable cartography', meaning the way stories flow and travel spatially and temporally, crossing differences of gender, countries and institutions, by recruiting and locating people within those narratives, assigning them a pre-determined position, power and agency, or

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<sup>155</sup> Goodale and Merry, *The Practice of Human Rights*.

<sup>156</sup>For more, see Brian Larkin, "Indian Films and Nigerian Lovers: Media and the Creation of Parallel Modernities," *Africa* 67, no. 03 (July 1997): 406-40, <https://doi.org/10.2307/1161182>.

<sup>157</sup>For more, see Arjun Appadurai and Carol A. Breckenridge, "Why Public Culture?," *Public Culture* 1, no. 1 (21 September 1988): 5-9, <https://doi.org/10.1215/08992363-1-1-5>.

erasing it. These dominant communicable cartographies erase alternative narratives and reproduce stereotypes. The manner in which this dominant narrative circulates, compelling litigants to either locate themselves as victim-subjects or to fight stereotypes of manipulative scheming wives, reflects the way stories of violence are narrated, and how women are emplotted in them. The iterability of story of misuse, and the injury misuse causes, is evident in how 'violence' is silenced in oral arguments and reiterated by women litigants, who are acutely aware of the doubt and suspicion with which they are perceived.

For Briggs, these 'communicable cartographies' of discourses can be rejected or accepted by those the discourses seek to reach or they can invoke or construct an alternative to the discourse. "As they receive a text, people can accept the communicable cartography it projects, accept it but reject the manner in which it seeks to position them, treat it critically or parodically, or invoke alternative cartographies."<sup>158</sup> The performative speech utterance and the perlocutionary power it yields is achievable only if it is communicable. The discourse, suggests Briggs, can be challenged or subverted. Briggs illustrates this subversion with his example of an infanticide female victim he was to interview and 'rescue' refused to accept and reproduce a solicited narrative, thus challenging her pre-assigned subject position of victim/monster/martyr.

It is here that I would like to introduce the story of Preeti.<sup>159</sup> Preeti a trained and practising dentist had filed a domestic violence complaint in 2010, approximately three years after her marriage, and she had been granted the right to monetary relief and the right to reside in her shared household by the court. I was referred to her by Nidhi, her lawyer, who described her as a 'half-lawyer', that is, someone who is conscious of her rights and involved in the legal strategising of her case. This labelling of her as a 'half-lawyer' was not said in admiration; rather, it was a disparaging introduction to who she was – an assertive and legally astute woman. Nidhi, who described herself as a 'feminist' lawyer, was clearly impressed with Preeti's professional credentials as a dentist who had won many medals for being an exceptional student, and had the ability to understand the law and how to use it. Her lawyer Varun similarly described Preeti as

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<sup>158</sup> For more, see Charles L. Briggs, "Anthropology, Interviewing, and Communicability in Contemporary Society," *Current Anthropology* 48, no. 4 (1 August 2007): 551–80, <https://doi.org/10.1086/518300>.

<sup>159</sup> *Fieldnotes from August 2014*.

someone capable of arguing her own case. “I wouldn’t worry if I can’t make it for an argument or a hearing. She’s capable of arguing her own case”, he said with a chuckle in one of our interviews.

Preeti had ‘experience’ of four cases, a case under Section 498A, a case under the Domestic Violence Act seeking civil reliefs, a case filed for restitution of conjugal rights<sup>160</sup>, and a divorce petition that was filed by her husband in the Family Court. These cases were spread over three different courts and were at different temporal stages. This meant she had to navigate different spatio-temporalities to attend to her cases. She had filed restitution of conjugal rights with the help of a second lawyer, despite her first lawyer’s disagreement, and she was contesting a divorce petition filed by her husband in the Family Court.

As cases of domestic violence are often narrated, Preeti too started her story with her wedding and its aftermath. After her wedding, Preeti had moved into her mother-in-laws’ home with her husband. “After getting married I lived with my in-laws. Although I’m educated I’m an Indian girl at heart. We lived like a happy family. I was head over heels in love with my husband. He was the only son. My mother-in law was scared I would take her son away. Even at the time of the wedding we met their wishes. I won’t say demands. He was their only son and they had wishes about their son’s wedding just like my mother had for me,” said Preeti. “Is she selling her son to me?” Preeti asked me rhetorically. I did not respond. Preeti argued that she had filed the case only to teach her husband a lesson. She emphatically stressed how the Domestic Violence Act should be used with the motive of stopping wrong. Describing her erroneous filing of Section 498A, as being misled by the police and her naiveté in giving her statement to the police, Preeti argued that a civil law and the emphasis on a civil remedy under the Domestic Violence Act was particularly

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<sup>160</sup> Under Section 9 of the Hindu Marriage Act, 1955 “either the husband or the wife, without reasonable excuses, withdraws from the society of the other, the aggrieved party may approach the Court for restitution of conjugal rights.” The section specifically states: “The decree of restitution of conjugal rights cannot be executed by forcing the party who has withdrawn from the society from the other to stay with the person who institutes Petition for restitution. The decree can be executed only by attachment of the properties of the judgment debtor. In the event the decree of restitution of conjugal right is not complied with for a period of more than a year from the date of the decree, it becomes a ground for divorce.”

suited to her situation, since her main goal was to alter her husband's behaviour and open his eyes to his and his family's wrongdoing.

Her criticism was also directed towards the court, which she said encouraged 'money settlements' to close the matter. "Judges also ask you: Do you want a conviction or your marriage? How can a judge ask such a question to a victim? Do you want restitution or a conviction? I (Preeti) said I'm highly educated, if he doesn't improve what can I do? If he apologises I'll reconcile. How can I ask for both? How am I wrong? If you want to stop bogus cases, stop the money settlement. Courts encourage money settlement. But the focus should be to improve the wrongdoer, or you go to the family court. The Domestic Violence Act can be misused. Some women are misusing it, I agree. The way to avoid misuse is by only allowing reconciliation."

The choice between money versus altering or mitigating violence was an interesting illustration provided by Preeti. That women misuse the law by claiming maintenance or making a monetary claim is voiced by judges and lawyers alike. Thus, the underlying accusation of misuse hints at how claims of violence are spurious, since what women really want is money. This even though the Act was meant to fill the gap that the criminal provisions under the Indian Penal Code did not provide for, namely financial reliefs so as to provide women with the option of moving out of violent relationships and their matrimonial homes. Her lawyer also suggested that Preeti would give up her desire to 'improve' her husband if she received a monetary settlement. Preeti had asked for 250,000 euros as a full and final monetary settlement. The suspicion with which her case was viewed, and the narrative of misusing the law was something she was familiar with. In my three-hour long first interview with her, she reiterated several times that her case and her claims of domestic violence were genuine. Her assertiveness and unwillingness to compromise struck discordantly with the legal subjectivity she was expected to assume, that of an aggrieved woman. The Act defines the 'aggrieved person' as any woman who has been subjected to an act of domestic violence. Under the Act, an 'aggrieved person' means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent. The use of the term 'aggrieved' which in the online Merriam-Webster dictionary is defined as being a person who is distressed or troubled or 'suffering from an infringement or denial of legal rights' implies a position of suffering, even before the case has been adjudicated. The definition acknowledges the applicant's suffering and

vulnerability, and she is presumed to be suffering even before the case is heard.

Preeti told me that her main goal was to improve her husband and change his behaviour. “If he changed and asked her for a reconciliation would you agree?” I asked. She thought for a moment and responded “I don’t want to any longer. I want a landmark judgement in my favour from the family court, that a wrong doer cannot ask for divorce. It will help in future litigations also.” While discussing details of her case, she narrated the lengths to which she had researched landmark cases that would support her case, and how she argued on the few occasions when her lawyer could not make it to court. Preeti was acutely aware of what the law could or could not do for her. She had filed for restitution of conjugal rights, despite her lawyer Nidhi’s opposition and unwillingness to file the case, and she was aware of the impossibility of executing the order, even if the court granted her a relief. In my interview with Nidhi, she said that as a feminist lawyer she strongly opposed a law that tied one down to a partner and was often used as a tactic to negotiate. Preeti’s husband was unwilling to live with her after filing the case under Section 498 A and the Domestic Violence Act. He did not feel he could do that after she had filed a domestic violence case against him. “How can he be allowed to argue that?” Preeti asked me.

This transformation of women into ‘half-lawyers’ and the legal consciousness they acquire surpasses just being ‘right-holding subjects’. Women like Preeti have learned to strategise, negotiate and navigate the legal system, at the same time they learn about the limitations of the law. How, for example, can Act ensure compliance of payment of monetary relief from a man who cannot be traced and on whom a notice to appear in court cannot be served? Or, how can the court compel a man to remain in a conjugal relationship? That litigants know their facts better than their lawyers puts them at an obvious advantage. This close interaction with the law also demystifies the law, as Preeti ironically observed, “How can my mother-in-law file a domestic violence case against me when I have filed a similar case against her previously? How can the court allow that?” she asked me, surprised by both the irony and irrationality of it all. The questioning of the gap and slippages between the promise of the Act and what it fails to do is unexpected from women who claim the category of the aggrieved victim, although it is their unwillingness to accept the situation that primarily leads them to the law in the first place.

Before our conversation commenced, Preeti inquired what exactly was I researching and what was its overall objective. After

understanding the nature of my research, she referred to numerous landmark cases I should closely look at for my research. The cases she referred to specifically denied women the right to a shared household if the property was not owned by the husband.<sup>161</sup> Contrary to these cases, she had achieved the right to live in the shared household, despite the property not being owned by her husband but by her mother-in law.

### **Silencing violence**

One of the foremost questions with which I undertook the fieldwork was to understand what happens to the Act in the day-to-day actions of a courtroom. How does a comprehensive legal definition and naming of ‘domestic violence’, which is considered one of the successes of the Act, change the nature of how violence claims are argued and represented in courtrooms. To my surprise, violence and the nature of violence women suffered rarely surfaced in the oral arguments I heard in courtrooms. Not even when lawyers argued for a right to the shared household did the question of what kind of violence did the woman suffer appear in the oral arguments. Instead, the predominant arguments focused on the civil remedies claimed by the aggrieved person, that is, the woman. The kind of violence that women suffered, and when and how that violence took place, appeared in cross-examinations of women only to question the truthfulness and authenticity of the written claims made in applications and affidavits. Otherwise, ‘violence’ was overlooked in the pursuit of civil reliefs, to borrow the words of Basu.<sup>162</sup> Domestic violence, as Basu notes, and many of the lawyers I interviewed admitted, was more a matter of legal strategy. Violence was mainly a ground on which women could seek civil remedies under the Act, and the goal of the Act was to provide remedies rather than to penalise the wrongdoer.

This silencing of violence from the core arguments in courts and swapping it for civil remedies that women want, renders the nature of violence suffered insignificant. The value placed on court time, and the small window for oral arguments provide little time for

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<sup>161</sup> Preeti specifically referred to *S.R. Batra vs. Taruna Batra* and *S. Prabhakaran v. State of Kerala*, AIR 2009 (NOC) 1017. Both cases took a more restricted approach to the definition of a shared household, implying that a husband should have a right in the property for it to be considered a shared household.

<sup>162</sup> Basu, *The Trouble with Marriage*, 192.



arguments that emphasise the violence suffered. Likewise, the civil nature of the Act shifts its goal from underscoring violence to ensuring that civil remedies are granted. This was essentially the role that the Act played in claims of domestic violence, as women's organisations and feminist activists realised what women want more than penalising their husbands and their families, was economic remedies.

The silencing of violence has consequences. It mainly feeds the narrative of 'misuse' and the claim that only cases of brutal abuse deserve the attention of court, not the 'one slap cases' as a High Court judge told me, complaining that although the Act is necessary, it gives vent to petty and frivolous cases of violence that she referred to as 'one slap cases', where women file cases because their husbands just slapped them once. By not articulating the nature of violence women suffered in courts, and failing to give it voice in courtrooms, lawyers diminish the other forms of violence that women suffer. Veena Das in her poignant ethnography on the riots in Delhi subsequent to the assassination of Prime Minister Indira Gandhi in 1984, recalls the eagerness and need of survivors to tell what happened to them and their suffering to be known, "as if the reality of it could only be reclaimed after it had become part of public discourse".<sup>163</sup> This 'not talking about violence' in courtrooms and the categorisation of 'one slap cases' renders 'some' violence in marriage as normal, something that should not solicit alarm or questioning.

The failure to acknowledge violence, and the lawyer and courtroom's categorisation into 'severe' and 'not so severe' violence transforms how women come to perceive the violence they suffered. The constant reiteration of the notion of the 'perfect victim' reappears in conversations with women litigants, despite the Act defining violence broadly to include physical abuse, verbal and emotional, sexual abuse, economic abuse, and social alienation. The badge of the 'perfect victim' is awarded to those who bear physical evidence of brutality. I will start with the story of Hina, one of the lawyers I followed during fieldwork. Like most lawyers I followed, I met Hina in the courtroom, she was a criminal lawyer with more than 20 years of legal practice. Over the months, Hina's office became a place I spent free time between court hours, where I took breaks for lunch with her colleagues, used the toilet or dropped by to say hello if I hadn't seen any of them for a while. It also was a place where I received news on cases that were coming up or cases that I should follow. On one of the

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<sup>163</sup> Veena Das, "Anthropological Knowledge and Collective Violence: The Riots in Delhi, November 1984"(1985) 1 *Anthropology Today* 4.

after-court evenings, I visited her office to witness how her client Zarna was being coached for her cross-examination by Manju, a lawyer working in Hina's office. After a brief chat with Hina in her chambers, she directed me to talk to her client Sameera.<sup>164</sup> "She has suffered even more violence than Zarna. They burned her hand," she said animatedly. "Zarna has suffered nothing in comparison", she added. This itself was a revelation about what kind of violence mattered. Sameera was also visiting them on that day as her original documents were being filed in court on the following day. A 27-year-old Muslim woman, she lived with her brother, who accompanied her to lawyer meetings and even paid for her son's schooling. Both Sameera and Zarna were within earshot, and had possibly heard our conversation. This normalisation of violence in the everyday processes of claiming civil remedies both in civil and criminal law are revealed in ethnographic encounters with the Act. The diminishing of violence and categorisation of degrees of severity is central to the discourse on who can be a victim-subject, thus expunging the other kinds of violence women suffer, and the acts of violence the civil Act takes into consideration.

### **Victim-violator to right-holding subjects**

Previous studies have shown how the disempowering categories of 'victim-woman' or 'battered woman' make for a convincing case,<sup>165</sup> and the narrative of the 'battered' gendered subject is crucial to obtaining reliefs under the Domestic Violence Act.<sup>166</sup> A. Suneetha and Vasudha Nagaraj claim that courts require evidence of violence, of 'good wifely behaviour' and 'the cruelty of husbands', in the courtroom.<sup>167</sup> They argue that when women file claims in courts, they have to follow established conventions of the adversarial system. Setting up a claim requires narrating and marshalling evidence that strengthens the woman's story or claim, ensuring that any conflicting or contested episodes that impact her claim and that can be negatively

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<sup>164</sup> I continue the story of Zarna in Chapter Four.

<sup>165</sup> Rosemary Hunter, "Narratives of Domestic Violence," *Sydney L. Rev.* 28 (2006): 733.

<sup>166</sup> Basu, "Playing Off Courts."

<sup>167</sup> A. Suneetha and Vasudha Nagaraj, "A Difficult Match: Women's Actions and Legal Institutions in the Face of Domestic Violence," *Economic and Political Weekly* 41, no. 41 (2006): 4355-62.

perceived are erased.<sup>168</sup> This also meets the criteria of reliable evidence. The victim/violator narrative, Richard Wilson argues, appeals to a universal narrative and lends an aura of authenticity. Wilson in his ethnography recounts how a murder of an elite local politician in Guatemala was ignored by global human rights' reportage, as the victim did not match the required profile of 'social or global marginality'. In order to be recognised as a human rights violation perpetrated by the state, both the victim and the nature of the murder have to fit a pre-determined criterion. The murder, concludes Wilson, was possibly therefore not publicised as a human rights' case, since the victim was neither poor nor uneducated. He was simply in the wrong category.

The victim-violator narrative that Wilson recounts was pared down to ensure plot coherence and was stripped of multiple meanings and narratives in order to present legal facts. How else can rights be claimed? The language of rights requires a commonality of experience from the category of the victim. 'Half-lawyers' complicate the stories we narrate, disrupting the plot of a good and convincing victim. Was Preeti misusing the law or was she negotiating 'under the shadow of the law'? This right-consciousness that was also displayed by the women I interviewed, stemmed from their textual understanding of the Domestic Violence Act - a recognition that the violence they suffered had a legal name, and entitled them to monetary relief and compensation. The women I met were sure of their rights and claims, even though those claims might stand in contrast to the rights of their personal laws, because the present law defined wrongs and bestowed rights.<sup>169</sup> However, the rights consciousness demonstrated by the women did not easily fit into the category of the 'aggrieved woman'. In Ziba Mir-Hosseini and Kim Longinotto's insightful documentary, *Divorce Iranian Style*, they show how Iranian women in small courts in Tehran use the law to obtain what they want and negotiate laws that

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<sup>168</sup> Suneetha and Nagaraj.

<sup>169</sup> Cases challenging the use of the Domestic Violence Act by divorced Muslim women applying for monetary relief under Section 12 of the Act have been widely reported by lawyers. The argument is that, as per the Muslim Women (Protection of Rights on Divorce) Act, 1986, Muslim women have no maintenance rights after divorce. However, a similar relief is available to Muslim women or any person under the Criminal Procedure Code.

favour men, either to escape their marriages and be granted a divorce, teach their husbands a lesson, or receive custody of their children.<sup>170</sup>

In the months of my fieldwork, all the women who filed an application under the Act were predominantly Muslim and Hindu married women. One of the chief reasons often provided for seeking relief under this law as opposed to personal law, was that women felt they had a greater chance of justice under a secular law where they had rights and matters were adjudicated in courts.<sup>171</sup> The Act was mostly used, however, because it promised early relief. It was also the stipulation that the case should be closed within sixty days of the first hearing that raised women's hope of a speedy resolution. The use of the Act, however, was also a quicker forum for receiving reliefs while divorce or custody cases were pending in Family Courts. In contrast to the personal laws, the Act provided quicker reliefs in the nature of interim relief. Almost all women I interviewed, apart from Muslim women, had cases simultaneously ongoing in Family Courts, mostly divorce cases. The Domestic Violence Act permits reliefs while other legal proceedings are ongoing before civil courts, family courts or criminal courts.<sup>172</sup>

Similar to Sally Engle Merry's study on how women become right-holding subjects,<sup>173</sup> the women I spoke to often saw themselves as right-bearing subjects. This legal consciousness<sup>174</sup> and the language of rights they appropriated from their interactions with the law, and

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<sup>170</sup> *Divorce Iranian Style*. 1998. Documentary film directed by Kim Longinotto and Ziba Mir-Hosseini.

<sup>171</sup> Zarna specifically mentioned that she had clear 'haq' or rights under the Domestic Violence Act, and this Act recognised that domestic violence was not acceptable and wrong. To her the Muslim law favoured men and therefore she had little faith in the Muslim law.

<sup>172</sup> Under Section 26 of the Domestic Violence Act, the female applicant can file a case under the Domestic Violence Act with other ongoing proceedings in other courts. The purpose is to reduce multiple proceedings ongoing in different courts, though in practice the women are often forced to run from court to court and attend multiple cases.

<sup>173</sup> Sally Engle Merry, "Rights Talk and the Experience of Law: Implementing Women's Human Rights to Protection from Violence," *Human Rights Quarterly* 25, no. 2 (6 May 2003): 343–81, <https://doi.org/10.1353/hrq.2003.0020>.

<sup>174</sup> Merry, *Getting Justice and Getting Even*.

the various stakeholders was shown in the cases of women I followed. Typically, their first interaction was with lawyers who instructed them about their rights and encouraged them to file the First Information Report (FIR)<sup>175</sup> or a non-cognizable report for an act of violence, hence providing evidence for the domestic violence they suffered. The first interim relief granted to them often instilled their faith in the law and their rights. The women first approached the law to mitigate violence and seek reliefs, but to contest that their positions are in a fixed category of 'victimhood' or as the Act defines an 'aggrieved woman' would be erroneous. Their status as 'victims' keeps shifting in the law, mainly depending on the stage of their litigation, whether they have been granted reliefs, and how many years have they spent in the courts, are whether they are fighting parallel cases in another court. The women I interviewed and whose cases I followed spent on average close to three years in court. Ultimately, it was often the bewildering and protracted legal system in which the case dragged on through adjournments, appeals, and revisions to application that caused the women to question the law.

When the women I interviewed referred to their rights under the law or when they illustrated the violence they suffered, they referred to the Act and reiterated how the wrongdoing or their rights were covered by the law. From early on women litigants learn that in order to claim or seek relief in the law, their narratives and descriptions of violence have to fall within legal definitions of violence. When they refer to Act, they are not necessarily referring to sections of the law or what it stipulates, as lawyers do, instead they are referring to how their grievances fall within the realm of the law – the first legal lesson most lawyers learn in framing legal petitions and complaints is how can a grievance be framed as a legal issue or problem. What the women I interviewed learned from the law was not limited to their own active interactions with it, it also included the observations they gathered from cases they had witnessed in court while waiting for their turn to come up, or how their lawyers negotiated and used the law. Similar to lawyers whose knowledge of the law goes beyond the legal textbook, but they learn from court corridors and colleagues, by attending cases argued by senior lawyers, and by observing legal argumentation and technique. Women litigants learn from what they see and hear in

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<sup>175</sup> A First Information Report (FIR) is filed at the police station by the complainant, and the police officer records this in writing. After the complaint is recorded, the investigation begins and the FIR recording and the investigation have to follow the procedure stipulated in section 154 of the Criminal Procedure Code, 1973.

courtrooms and this is important in their acquisition of legal know-how. But how does this image of domestic violence victims as 'half lawyers' coalesce with the notion of the vulnerable victim? And more importantly, who is the other half and how is the other half represented? This image of 'half lawyers' and 'half victims' is not an easy amalgamation.

### **The Ethics of Listening and Narrating**

Preeti was an interlocutor and an aggrieved woman. Preeti's case showed how narratives of domestic violence prompt a particular subject position, and how connections between narrative and violence take a pre-determined trajectory, but also how such narratives can be both conformed to and challenged/questioned. By disrupting the narrative as a 'half lawyer', and then assuming the role of a victim Preeti disrupted the seamless domestic violence narratives that both activists, media, and courts perpetuate. These stories of violence, Briggs adds, are objects of their own making, dissemination and reception, as they discursively seem to unfold once the target human interlocutor is listening. Preeti in a way knew that I was the 'listener'. I was researching domestic violence cases from the perspective of women litigants, and yet I was also a married woman of a similar age to her. We discovered we belonged to the same community, shared a common language and got married at the same age. Her unexpected revelation as we stepped out of the women's toilet that she liked short hair like mine, but did not clip her hair short because her husband likes her with long hair, took me by surprise, but it was also a window into her desire for what Anthony Giddens describes as 'romantic intimacy' within modern marriages, rather than a relationship that involved community, duty and obligation. Preeti's marriage was arranged by her parents, as opposed to a long 'courtship' identified with modern romantic love, yet her articulation and desire for an equal and intimate relationship that was her own choice and that positioned her equally in the marriage, played out in how she employed the law.<sup>176</sup> As an educated Indian woman with considerable

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<sup>176</sup> Anthony Giddens notes that for 'romantic love', intimacy, choice and individual interest take precedence over connections with the community, kin and other members. Thus, with romantic love there is less concern for the values of duty, obligation, kin and family norms, rather it is intimacy and individual preferences that are primarily valued. Similarly, Henrike Donner writing on love and marriage observes that the popular celebration of Valentine's Day and its global appeal reinforces the narrative of romantic love that is essential to Western ideas of marriage. For more, see Anthony Giddens and Christopher Pierson, *Conversations with Anthony Giddens*:

financial mobility, she was articulating what she thought her marriage should have – both equality and intimacy.

I did not directly ask her about the violence she had suffered, respecting her silence on the matter that led her to court in the first place, and was instead led by her into the conversation we shared. This respecting of silence and listening to what is not said is what Jennie E. Burnet calls deep empathy.<sup>177</sup> Part of this also involves, Burnet adds, suppressing your natural reaction to ask questions that may be contrary to your belief. I had let go of my natural reaction to question Preeti why did she want to grow her hair for her estranged husband, or why for that matter, did she want to be with a man who did not want her? Instead, our conversations revealed how she wanted an acknowledgement from her husband about the wrong he had done. By not consenting to divorce and by seeking restitution of her conjugal rights, she was challenging the unfairness of how in Indian society her husband could re-marry, but she was doomed to be alone, despite being the wronged party. She reiterated the unfairness of Indian society, where despite her education she was relegated to a lower position. Using the metaphor of ‘*swachh bharat*’ (clean India), a slogan adopted by the current Government to clean the streets, she emphasised how a country can clean its outside filth, even though “our hearts are corrupt”. Preeti was essentially using the law to remedy the gender imbalances that the husband who had mistreated her would get away with. Unlike her, she could easily remarry without any hindrances and without it affecting his remarriage prospects.

At the same time, this ‘empathetic listening’<sup>178</sup> revealed how women who are able to play the part of their own interlocutors invite suspicion and contempt from both lawyers and judges alike. Preeti’s refusal to accept her pre-determined position as a victim, her questioning whether her lawyers should take a certain argument that might be more suited to her case, and as an educated woman her constant

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*Making Sense of Modernity* (John Wiley & Sons, 2013); Henrike Donner, “Love and Marriage, Globally,” *Anthropology of This Century* 4 (2012).

<sup>177</sup> Jennie E. Burnet, *Genocide Lives in Us: Women, Memory, and Silence in Rwanda* (University of Wisconsin Press, 2012).

<sup>178</sup> In her dissertation, Henni Alava writes about empathetic listening from the perspective of silence, and what listening to ‘silence’ means. For more, see Alava, “There Is Confusion.”

refusal to accept violence, broke away from the way in which narratives of domestic violence usually played out in discourses.

Briggs reminds us how ‘disrupted narratives’ open up the complicated nature of both listening and narrating stories of violence. By presenting these narrative disruptions, I hope these ‘narratives of violence’ complicate the stories that I unfold. My partial reluctance in sharing this case was the fear of simplifying the narratives of violence, and giving vent to either the perfect victim or the half lawyer position. As a researcher, the ethics of being silent and knowing when to speak and how the narrative is structured are as essential as the ethics of withholding names or not geographically locating the court or parties to ensure that my informers both lawyers and litigants are not harmed. The ethics of how we should listen, though, are difficult to articulate and difficult to regulate. Both my role as a woman researcher, and my previous work as a women’s rights lawyer working on the Domestic Violence Act does colour the kind of questions I asked, what was shared with me, how I listened to stories, and how I choose to narrate stories. The fact that this thesis primarily focuses on women’s stories, and recounts and narrates their story, is a limitation I am aware of. Yet, given the nature of the Act, which permits only women to apply for reliefs under the Act, the focus naturally moved towards how the Act was used by women and towards what end.

Recounting stories we are told, the researcher is often reminded of the ethics involved in revealing their informers or how pushing those who have suffered violence to recount their stories can cause further harm. The complicated nature of what can be narrated, when and how puts the researcher in a unique position. As Burnet argues, the multiple voices we present are critical to the nature of ethnography itself, exposing the contradictions and complexities in discourses and social relations. It is by taking into the consideration multiple and inherently contradictory voices that we arrive at particular ways of seeing, what Donna Haraway calls ‘situated knowledge’,<sup>179</sup> even though ethnography and the way we sense and how we narrate is unique to us.

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<sup>179</sup> Donna Haraway, “Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective,” *Feminist Studies* 14, no. 3 (1988): 575, <https://doi.org/10.2307/3178066>.



## Conclusion

That women negotiate in “the shadow of the law”<sup>180</sup> is not new, nor is the way in which the law transforms the women a new argument. Litigants do not alone transform, but law and its definitional meanings and what becomes of the law is also transformed beyond legal amendments or judicial pronouncements. The law that women litigants talk about is not an ‘object or instrument of social change’, as feminist legal activists have defined it in their advocacy and campaigning of the law. Neither, does it effectively meet the feminist goals of gender-equity and empowerment. The emancipatory goal of feminist politics and rights discourse<sup>181</sup> is limited by the category of ‘victimhood’ and the gender and cultural essentialism involved in defining women as a ‘coherent group’,<sup>182</sup> and the interventions in saving the third-world women victim and the pitfalls this entails have been critically examined by scholars.<sup>183</sup> The victim category, though, is crucial for credibility when accessing rights in courts, providing as it does the necessary language to approach the court in the first place.

The question of the role that the Domestic Violence Act plays in my thesis brings me back to why the law was a starting point in my study. This study is not located in the normative inquiry of domestic violence nor the enforcement of the domestic violence law in courtrooms. Nor is it about feminist jurisprudence or how the law is used as an instrument or a social tool for accessing justice, or how it is subverted or transformed. The Act, if anything, is a focal point for departure, it aids in narrowing down the scope of the study, and in specifically responding to what happens when women come ‘before the law’. When I write about the law, I am not solely referring to the Domestic Violence Act. Law, as I show, eludes narrow definitional frameworks, since it is difficult to capture and pin down despite its

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<sup>180</sup> Robert H. Mnookin and Lewis Kornhauser, “Bargaining in the Shadow of the Law: The Case of Divorce,” *The Yale Law Journal* 88, no. 5 (April 1979): 950, <https://doi.org/10.2307/795824>.

<sup>181</sup> Nivedita Menon, *Recovering Subversion: Feminist Politics Beyond the Law* (University of Illinois Press, 2004), 288.

<sup>182</sup> For more, see Mohanty, “Under Western Eyes.”

<sup>183</sup> For more, see Basu, “Judges of Normality.” Kapur, “The Tragedy of Victimization Rhetoric.” Basu, “Playing Off Courts.” Menon, *Recovering Subversion*.

textual framing in legal books and files,<sup>184</sup> or its spatial-temporal locations in courts as places of adjudications. Indeed, as shown, the law escapes women as they struggle to reach it.

It eludes us also largely when we learn that women access it through multiple forums, not just through the many state codified laws, and not just through courts alone, but also through community interventions. The manner in which women reach resolution for their cases, as previously argued, falls outside of the narrow definitional framework of what law is, since their experience of 'law' is multi-dimensional, spilling outside of the textual, spatial and temporal frames, and challenging the uniform experience of law. This rendering of the law is beyond the local-global debates of how the 'local talk back' or the spatial metaphors of local and global.<sup>185</sup> The diffusion of the law and the state is what Shalini Randeria has called 'scattered sovereignties'. Contrary to the globalisation rhetoric that advocates the minimising of the state role in rule and law making, Randeria argues that the state has rarely been the sole producer and adjudicator of law and this fact is not new or out of the ordinary, given the postcolonial plural legal landscape.<sup>186</sup> How ideas travel and are transformed, and what is local or global can no longer be located in a single encounter.<sup>187</sup> In this chapter, I have attempted to present the complex nature of using the Act, when and why the Act was enacted, and how the question of violence, and its articulation in courtrooms and dominant discourses is silenced.

It is, as Vismann has written, literary fictions that highlight the realities of the law.<sup>188</sup> Likewise, in this thesis it is in the stories that I follow that law makes its appearances in its many forms.

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<sup>184</sup> Vismann and Winthrop-Young, *Files*.

<sup>185</sup> Levitt and Merry, "Vernacularization on the Ground."

<sup>186</sup> For more, see Shalini Randeria, "Glocalization of Law: Environmental Justice, World Bank, NGOs and the Cunning State in India," *Current Sociology* 51, no. 3-4 (1 May 2003): 305-28, <https://doi.org/10.1177/0011392103051003009>.

<sup>187</sup> Livia Holden, *Legal Pluralism and Governance in South Asia and Diasporas* (Routledge, 2016).

<sup>188</sup> Vismann and Winthrop-Young, *Files*.

## Chapter Three

### Spatial Arrangement and Hearing in a Courtroom

*I step down off the suburban railway station foot over bridge leading to the lower court in the Northern suburbs of Mumbai, male lawyers cloaked in black and white peddle their services. “Affidavit”, says one, “Notary”, mutters another approaching me discreetly. Yet, another male lawyer shoves a visiting card into my hands. I dodge them, and shake my head in response to their offers. The jumble of honks, careening buses screeching to a halt at a traffic signal, the toots of cars and bikes seems to get more persistent and angrier, drowning a few other words thrown at me by the male lawyers concerning the services they offer. A metal rattle of the peddler selling sweet lime water and the temple gong cut through the dense sounds of the rush-hour traffic. I make my way onto the second floor of the eight-storeyed court building into one of the four courtrooms, where every Friday domestic violence cases are heard. The traffic honks follow me up as I am hit by a mix of stale sweat and the unmistakable smell of a disinfectant that overrides the smell of urine. More than a dozen people stand chatting in the landing area. I enter one of the two square courtrooms overlooking the foot over bridge that connects the railway station to the road, the Magistrate is seated at the centre of the room on a podium and lawyers stand before him. I enter head bowed down and make my way around the standing crowd to seat myself on the third row on the left-hand corner closer to the window. The traffic jumble crescendos, a cry of a child emanates from the waiting area but fades away soon enough, the fast-paced clacking of typewriters from court administrative offices knifes through other sounds, the garbled, static chatter of people inside the courtroom and outside continues without any pause while the court proceedings are ongoing.*

The soundscape of the lower courtroom in Northern Mumbai, the field of my study, was sonically dense and alive, deeply rooted in the fabric of the city. What the court sounded like, as opposed to what it said, is not of significance in court reporting in legal journals and newspapers alike. And why should it be, after all, it is what the court pronounces that has a profound impact on law and legal precedents. Was the judgement in line with recognised principles of law? Did the court overrule a previous ruling or how does this impact future cases dealing with similar questions of law and fact? What were the facts at issue? Certainly, stock images of the court do make it into newspaper publications, thus reinforcing the gravity and authority of the legal

judgement – what Peter Goodrich has called its ‘visiocracy’.<sup>189</sup> On the other hand, the question of sound has received less attention. Sound, though, is critical to questions of how the law hears and what it lends its attention to. It directs our attention to an architectural element of how spatial arrangement, in addition to laying the foundation for both visual, spatial, and temporal boundaries erected in legal proceedings, dictates how aurally accessible court proceedings are.<sup>190</sup> Both the structure of a legal proceeding and the spatial location participants are allocated in a trial influence the role of participants in the trial. As Linda Mulcahy observes, the spatial layout of the courtroom either undermines the role participants play or confers them with dignity.<sup>191</sup> Who appears where and when in the trial is a key indicator of their role in legal proceedings. The judge and lawyers, and the spatial ‘well’<sup>192</sup> occupies a prominent space in the courtroom layout. The positions of these two key actors neither shifts nor diminishes in the course of a trial, and that explains why they are afforded the space they are – they have to be heard. As for the litigants, they come and go. Their spatial-temporal positionality is contingent on the juridical

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<sup>189</sup>Peter Goodrich illustrates his argument of the power of visual rhetoric by citing an example of how first-year law students in a course on legal research and case analysis in the New York Law School have to argue a case. Divided into two groups, one group of students argued in an informal setting and with a judge in plain clothes, while the other group argued in a formal setting that was adorned with Latin inscriptions, murals, bench, thrones etc and had a robed judge. When students were questioned on the legitimacy of justice in the first case, they said that justice was more likely in the second setting where the visual and ceremonial rhetoric of law was visible. Thus, for Goodrich, the ceremonial and sartorial rhetorics of the everyday visual of law have to be considered, for what the students saw in the insignia, robes and elevation affects our perception and apprehension of law, legal authority and the justice of judgement. For more, see Peter Goodrich, "Visiocracy: On the Futures of the Fingerpost," *Critical Inquiry* 39, no. 3 (2013): 498–531, <https://doi.org/10.1086/670043>.

<sup>190</sup> Linda Mulcahy writes on what the implications of physical and spatial boundaries on justice are. See, Mulcahy, *Legal Architecture*.

<sup>191</sup> Mulcahy.

<sup>192</sup> The ‘well’ or space I refer to here is not a barricaded space, but is basically a space where lawyers arguing the matter stand facing the magistrate or the judge. See the courtroom layout below, which is a visual sketch of how the courtroom is arranged.

identities that they occupy in a legal proceeding.<sup>193</sup> For instance, whether persons are an applicant/complainant or a respondent or whether they are responding to a complaint determines their role in the trial. The role they play in the trial governs the spatial-temporal position they occupy, that is, whether they take centre stage in the trial procedure or are relegated to the margins. Do they have to be cross-examined? Do they provide insight into the facts of a case? In short, do they have something of value to say that may shed light on the facts of a case?

In this chapter, I will start with the soundscape of the courtroom and the hearing in law. The image of justice is that of a blindfolded woman, but what about her ears? That is, how does the law hear and do we in turn hear the law. When I write about the ear and hearing in law, I argue that law has many kinds of 'ears' and it 'hears' in different ways. Firstly, I make a distinction between what is audible and what is inaudible. I begin with what Clifford Geertz describes as a 'thick description' of the court I studied, which was sonically dense. 'Thick description' as opposed to 'thin description', Geertz explains, means placing what we observe in context, not merely observing. Essentially thick description is "an interpretative search of meaning", it is there he argued lies the objective of ethnography, to provide a meaningful structure and to make sense of what we see.<sup>194</sup> Thus, by focusing on the description of the sonic environs of the lower court, I demonstrate that the court proceedings were not audible to everyone, so the question is to whom were the proceedings audible and to whom did they remain out of reach. Secondly, I make a distinction between the many 'hearings', that is, the hearing that is stipulated by the law and implicit in debates on access to justice and the right to a fair trial, and the many hearings that take place in the courtroom. This hearing, as I demonstrate, is a function of who hears, who is heard and what is 'heard' and 'unheard' in the lower

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<sup>193</sup> When I use the term 'juridical identities' I am referring to the legal position one assumes in a trial. Under the Domestic Violence Act, the juridical identity is defined by law as the 'aggrieved person', or complainant seeking redressal under the law. Baxi writes, however, that juridical identities are not static, and shift in the trial. Thus, a rape victim can occupy multiple juridical identities at the same time and at different stages during the trial. For more, see Baxi, *Public Secrets of Law*.

<sup>194</sup> For more, see Clifford Geertz, "Thick Description: Toward an Interpretive Theory of Culture," [http://www.sociosite.net/topics/texts/Geertz\\_Thick\\_Description.php](http://www.sociosite.net/topics/texts/Geertz_Thick_Description.php).

courtroom, and I differentiate this from ‘listening’ – which is, what the court takes notice of.

I rely on Paul Carter’s argument here, that listening is intentional or engaged hearing, what he describes as an equivalent of “eyes meeting and the sense that this produces of being involved in a communicational contract”.<sup>195</sup> Unlike hearing that is monological, listening is always in dialogue since it involves a response from the listener. Judges in court do not hear by choice, but listening is still intentional. Listening, thus, is not merely communication by a speaker to a listener, as Charles Hirschkind writes, it is ‘a collective performance’ for which both the speaker and the listener are responsible.<sup>196</sup> What becomes of interest then is whether the court must hear or listen to meet the principles of a fair trial. Can it still qualify as a fair hearing if a court hears, but does not necessarily listen to its litigants? Is it even reasonable to expect the court to listen, given listening relies on intersubjectivity. Of particular relevance here is what are the conditions of subjectivity in a court that is not arranged in a spatially equal manner? These are some of the critical questions I consider when I evaluate what hearing and listening means, as well as the conditions under which they are exercised in lower courtrooms.

Hearing itself is a trained activity. Not everyone is ‘heard’, and not all cases deserve the same attention. Judges are trained to hear, and differentiate between ‘garbage cases’<sup>197</sup> and important cases, thus listening to what deserves attention and omitting what does not. I argue that how the law attunes its ears to ‘hearing’ is not in line with the human sensory perception. Does the law hear what is being said or is it unheard? I juxtapose the sonic denseness and aural leakiness of

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<sup>195</sup> Paul Carter, "Ambiguous Traces, Mishearing, and Auditory Space," *Hearing Cultures: Essays on Sound, Listening, and Modernity*, 1 January 2004, 43–64.

<sup>196</sup> Hirschkind, *The Ethical Soundscape*.

<sup>197</sup> Most cases under the Domestic Violence Act are viewed as matrimonial bickering that can easily be ‘settled’, instead of taking up court time. Impatience with listening to arguments or proceeding with cross-examinations when the case can be easily resolved by striking a compromise is evident in the manner in which judges bring up ‘settlement’ throughout the proceedings. In Sally Engle Merry’s monograph on lower trial courts in America, Merry writes about how the court staff view the cases brought to court as trivial, frivolous, or ‘garbage’ cases. For more, see Merry, *Getting Justice and Getting Even*.

the courtroom with the denial of ‘audibility’ and hearing, where the women litigants I studied were not ‘heard’. In contrast to the ‘aural’ denseness where the outside/inside sonic worlds intersect in the lower courtroom, the law as I demonstrate denies ‘hearing’ to women litigants. By ‘aural leakiness’, I mean how sound fails to comply with the regulations of ‘silence’ and ‘solemnity’ that are expected in a courtroom space. Instead, as Hamilton et al point out, it “leaks out of those efforts or dances around them altogether”.<sup>198</sup> These slippages in the courtroom are firstly what is lost owing to inaudibility, and secondly, they are a result of the language of law and the multiple languages used in the courtroom and its subsequent interpretations. Thus, to borrow the words of Srimati Basu, the focus in this chapter is not “teleology of judgment but on the dynamics of hearing”.<sup>199</sup> I am not interested in ‘judgement’, but in the process of judging and its correlation to hearing and what a right to a fair hearing implies both from the perspective of what is stipulated in law and what it translates to sensorially.

The dynamics of hearing, as I demonstrate, are affected by how a courtroom is spatially designed, that is who sits where, who stands and who speaks. Whether one is spatially foregrounded by occupying the front seats in the courtroom, or pushed into the back rows, is critical to aural access of court proceedings. The language of the law and the many languages in the courtroom, with constant switching between languages, translations and silences are similarly critical to hearing and legibility in law. The back and forth where ‘the spoken’ in court is translated into the official language of the court, in this case the English language, and into official record by the court, where it is stripped of its colloquiality. Cross-examinations are critical illustrations of these translations where the court often reminds litigants of the structured question-answer format that is further reduced into writing in the formal mode of question and response without the interruptions, prodding, scolding and silences that are commonplace in courts. This erasure of interruptions and silences in ‘hearings’ depict seamless hearings and legal processes, the purpose of which is mainly to produce a courtroom record for reading.

This takes us back to the question of what constitutes ‘hearing’ in the courtroom and what speaking or legibility in law entails. As

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<sup>198</sup> Hamilton et al., *Sensing Law*.

<sup>199</sup> Srimati Basu, *The Trouble with Marriage: Feminists Confront Law and Violence in India* (University of California Press 2015).

previously discussed, much of the discussion on ‘access to justice’ has been limited to physical and monetary access to courts in India without exploring what happens once we enter the precincts of a courthouse. But what happens if ‘hearing’ itself is denied? What if the definitional meaning of ‘access’ is met, but hearing remains elusive and ‘out of reach’? Is the failure of a ‘hearing’ in a courtroom a denial of ‘justice’ and access? In a court, where the outside sounds are not discriminated against the aural failure is even more accentuated. I earmark these questions here mainly to underscore that they are critical to the question of hearing.

I ask these questions from the institutional setting of the court I located myself in. Limiting the question of audibility and hearing to the court and the courtroom alone, however, will be akin to narrating half the story. Given this chapter is about hearing and listening, the acoustic architecture of the courtroom and the city are important to attend to the question of ‘hearing’. We witness the undercurrents of the city in the court, and it is an essential part of our perceptual experience of the courtroom, even if it is unrecognised. Thus, this chapter brings to the fore the aurally charged city and suburb where the court is located. Such factors are essential to the dynamics of hearing and the implications they have on listening, and the kind of listening practices that emerge, the slippages and distractions, and how the listening is altered. The aural world of the city is essential and integral to the kind of listening that emerges; it affects what gets lost or slips out, and it alters the way in which we ‘listen’.

I started this chapter with the ‘sonic intensity’ of Mumbai.<sup>200</sup> What does Mumbai sound like? As difficult as it is to reduce sounds to a textual medium, I present a brief history of the city of Mumbai. From there, I move on to the question of audibility and hearing in the court itself and present an ethnographic description of the court. I focus on the spatial layout of the courtroom and the legal procedure in particular. That is to say, the acoustics of the courtroom that heighten certain sounds while others are ignored is a result of spatial arrangement and legal procedure that dictate who occupies what

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<sup>200</sup> As Hirschkind in his ethnographic study of cassette sermons observes, ‘the sonic intensity’ of Cairo forms an essential part of the listening practices of his informants, even if they are aurally unconscious of it. Listening to sermons in the chaos of Cairo, Hirschkind demonstrates, is far from the calm, quiescence and silence associated with the act of listening. Instead, Hirschkind shifts our attention to the other sensorial dimensions of listening that go beyond the cognitive. See Hirschkind, *The Ethical Soundscape*.



space. The third section deals with the many layers of ‘hearings’. By hearing I do not merely mean what is audible, I mean what constitutes a hearing and the many languages that impede or foster a better hearing. This includes what does the right to a fair hearing as stipulated in law mean sensorially, and, more importantly, I differentiate hearing from listening.

### The city

Let me start by taking you to Mumbai.<sup>201</sup> Mumbai, the capital of the state of Maharashtra, is a large metropolitan city with a population of around 18 million.<sup>202</sup> A financial and entertainment capital of India, the cosmopolitan city attracts economic migrants from across the country and the evidence of this is the number of languages that are spoken on its streets. Conversations switch from Hindi to Marathi<sup>203</sup> to English to Gujarati, and what emerges from it is typically called *bombaiya* – a language of its own, a language that its dwellers speak. Much like its street lingo, the daily rush to get things done is

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<sup>201</sup> It was only in 1995 that Bombay became Mumbai, when the ruling political party Shiv Sena and the Bhartiya Janta Party compelled the name change. Shiv Sena in particular claimed to be representing the local people, that is the ‘Maharashtrians’. The name was changed on all bureaucratic state documents, and all local shops and restaurants were ordered to have the name written in the local script, Marathi, the state language. This change in name from Mumbai to Bombay to many effaced the cosmopolitan character of the city. Political parties, however, claimed that ‘Mumbai’ was more honest to its local origins, since it referred to the Goddess Mumba Devi that the Koli fisher folk, the first inhabitants of the city of Mumbai, worshipped. The name itself has seen many changes. Thomas Hansen considers that the renaming of the city was a way of affixing identities. The re-naming of the city, he writes, is about the question of which space and whose history should it make a reference to. In a city and a state that is spectacularly multilingual, this naming of the city also has to be appropriated and demarcated linguistically, though the questions remains “in which language should the name properly be enunciated?”. See Thomas Blom Hansen, *Wages of Violence: Naming and Identity in Postcolonial Bombay* (Princeton University Press, 2001), 3.

<sup>202</sup> According to the last census of 2011, the metropolitan population of the city is around 18 million.

<sup>203</sup> Given its very cosmopolitan demographic, Marathi, Gujarati, English, Hindi, are all very widely spoken languages. Although the state’s official language is Marathi. All bureaucratic documents are available in English and Hindi too, and they are both widely spoken languages.

also typical of the city. The urgent honking of cars, the entrepreneurial spirit of its peddlers hawking pirated books, fruits, magazines when the street lights turn red, and the jostling for space as commuters throng the commercial centre to the South of the city and return back to their far suburban homes on local trains, buses and cars is also typical of Mumbai. As a city that harbours many dreams: from Bollywood glitz to migrants who make it to the city to seize what Bombay has to offer in terms of livelihood, Mumbai or Bombay is also where the East India Company set up trade in 1668. A port city, made up of seven islands, trade grew rapidly in the city, bringing cotton merchants and mill workers in the 17<sup>th</sup> century. The island, thus, has long been considered a bastion of fulfilling dreams, whether cinematic or otherwise. Songs have been picturised, featuring the vast expanse of the Arabian Sea in a monsoon, visuals of tall towers and slums in the same frame depending on the plot, and stories of its ruthlessness and apathy abound. Throbbing and pulsating till the early hours of the morning, its description as a city 'that never sleeps' is clichéd but is nevertheless true. "Why do people still live in Bombay?" asked Suketu Mehta in his book on Bombay, *Maximum City*, lamenting how solitude is a luxury in a city where the assault on the senses is persistent. In *Bombay, Meri Jaan* (*meri jaan* means my sweetheart) titled after the famous Bollywood<sup>204</sup> song by the same name,<sup>205</sup> editors Jerry Pinto and Naresh Fernandes<sup>206</sup> have selected a collection of texts that capture the mad rush of the city with its all-embracing attitude. They write:

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<sup>204</sup> Bollywood, as it is popularly called, has come to mean commercial or popular Hindi movies made in Mumbai. The name is derived from Bombay, and the American film industry Hollywood which is its famous counterpart. Although, movies are made and produced in other languages in India, Bollywood cinema, as Rachel Dwyer writes has a more global appeal and is famous worldwide. For more, see Rachel Dwyer, "Bollywood's India: Hindi Cinema as a Guide to Modern India," *Asian Affairs* 41, no. 3 (1 November 2010): 381–98, <https://doi.org/10.1080/03068374.2010.508231>.

<sup>205</sup> The song is about the difficulties of living in Mumbai. The lyrics in its quintessential *bambaiya* language say how it is a city where you can find everything but a heart and a place for people. It warns you to be careful since this is *Bambai meri jaan* (yet another name for the city). Picturised in the elite neighbourhood of Marine Drive with its art deco buildings facing the Arabian Sea, the song is from the film *C.I.D.*, released in 1956, when Mumbai was Bombay. See, *C.I.D.* 1956, directed by Raj Khosla.

<sup>206</sup> Jerry Pinto and Naresh Fernandes, *Bombay, Meri Jaan: Writings on Mumbai* (Penguin Books India, 2003), 337.

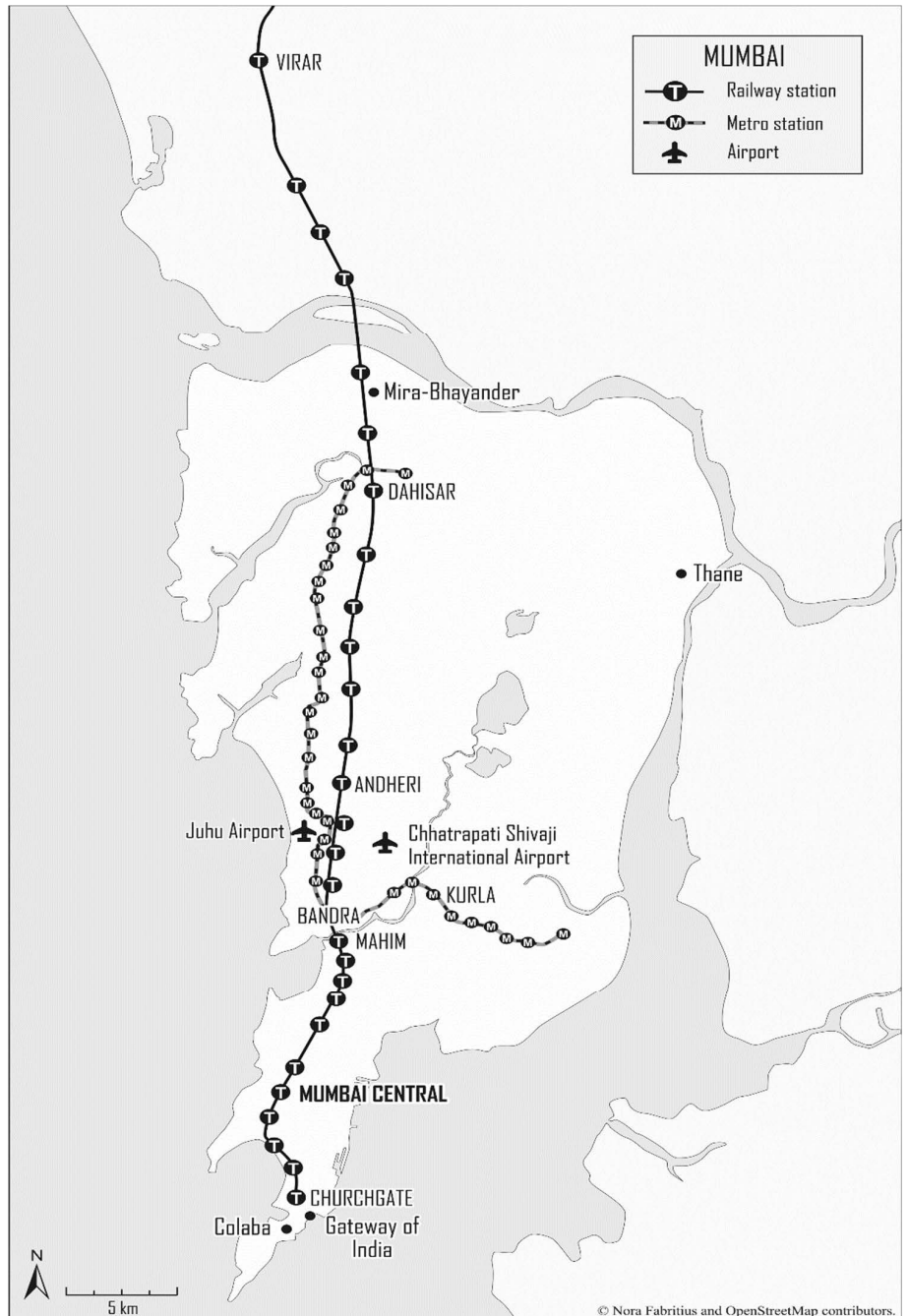
"If you are late for work in Bombay, and reach the station just as the train is leaving the platform, you can run up to the packed compartments and you will find many hands stretching out to grab you on board, unfolding outward from the train like petals. As you run alongside you will be picked up, and some tiny space will be made for your feet on the edge of the open doorway. The rest is up to you ..."

Not much, however, has been said about the 'sounds of Mumbai'. What does Mumbai sound like? While the city makes for a great backdrop and subject in fictionalised worlds or documentaries or even the Harvard case study on the clockwork precision with which the *dabbawallas* of Mumbai deliver tiffin boxes, the focus is on what we see and what Mumbai and its spirit of having things done is all about.<sup>207</sup> The monotone, screeching sounds of the crowded local trains plying across the city coming to a halt, the loud impatient honking and traffic snarls as cars and *autorickshaws* 'cut'<sup>208</sup> each other, and the call for prayer from the mosque do not happen in isolation but are interlaced with each other, even though in films the ambient sounds of the city are faded out to foreground the plot. So, when I talk about audibility and hearing I cannot do so without the backdrop of Mumbai, where the lower court is located. How do we 'hear' in Mumbai or how does Mumbai hear us is after all essential to the hearing in courts, as the outer and inner worlds intersect. Thus, being heard is akin to squeezing in through the doorway, the 'rest is up to us', where much of what we hear and how we are heard lies in a contextual specificity of what hearing is, and what it means.

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<sup>207</sup> The Harvard Business School case study on the *dabbawallas* of Mumbai who deliver more than 130,000 lunchboxes per day across the city of Mumbai from homes to offices six days a week with rarely an error. This delivery service is performed by the *dabbawallas* without the use of any technology or IT systems. For more, see Stefan Thomke, "Mumbai's Models of Service Excellence," *Harvard Business Review*, 1 November 2012, <https://hbr.org/2012/11/mumbais-models-of-service-excellence>.

<sup>208</sup> Mumbai is known to have a terminology of its own. 'Cut' here refers to how vehicles constantly overtake each other on the streets to ensure that they miss the red light, or reach the destination a few seconds earlier. It is this constant hurry and impatience that characterises the city.



## Spatial design and accessibility

Courts are set away from busy roads where the courthouse or a court precinct disconnects the outside from the inside world.<sup>209</sup> Contrary to the court designs of hallowed court gates, ceremonial doors, and avoidance of the public gaze, the lower court I situated myself in stood practically on a public highway. A nondescript building with mould on its façade like many Mumbai buildings, if it was not for the black-robed lawyers hounding potential clients on the street, the court could be easily missed. The court lacked any extraordinary characteristics to set it apart, nor did it have any additional ritual to compensate for lack of grandeur to render its proceedings significant.<sup>210</sup> Paul Rock in his seminal work article on Crown Court in London, describes how courts are designed in a manner that we make a transition from the outside world to another place, both in space and time.<sup>211</sup> He writes:

The courtrooms are insulated indeed. Around them there are double sets of ceremonial doors advertising the scale of the transition that must be made when people quit public space for an area reserved for a set of very special activities, when they leave the smoky, sometimes bustling world of the waiting areas for the decorum of the court. The doors mark a frontier between a private, sober inside and a wilder outside, between the orderliness of the trial and the disorderliness of the lobbies, between the sphere of the civilian and that of the professional. (1991, 275)

In the court I studied, the bustling city made its way into the courtroom. Like lower courts, especially trial court, the court I studied was crowded and intense. It had none of the imposing architectural grandeur associated with higher courts, such as the High Court of Bombay and the Supreme Court of India, and like most lower trial courts it was situated on the main road and in close proximity to a railway station, for ease of access. This meant that the sounds of the outside world of traffic snarls, commuters and vendors and lawyers

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<sup>209</sup> Mulcahy, *Legal Architecture*.

<sup>210</sup> Mulcahy writes that what a site of adjudication lacks in characteristics it makes up for with ritual in order to hammer in the significance of the proceedings. For more, see Mulcahy.

<sup>211</sup> Rock, "Witnesses and Space in a Crown Court."

hawking services crept into the courtrooms, partaking in the legal proceedings. The windows of the courtrooms stayed open all year round.

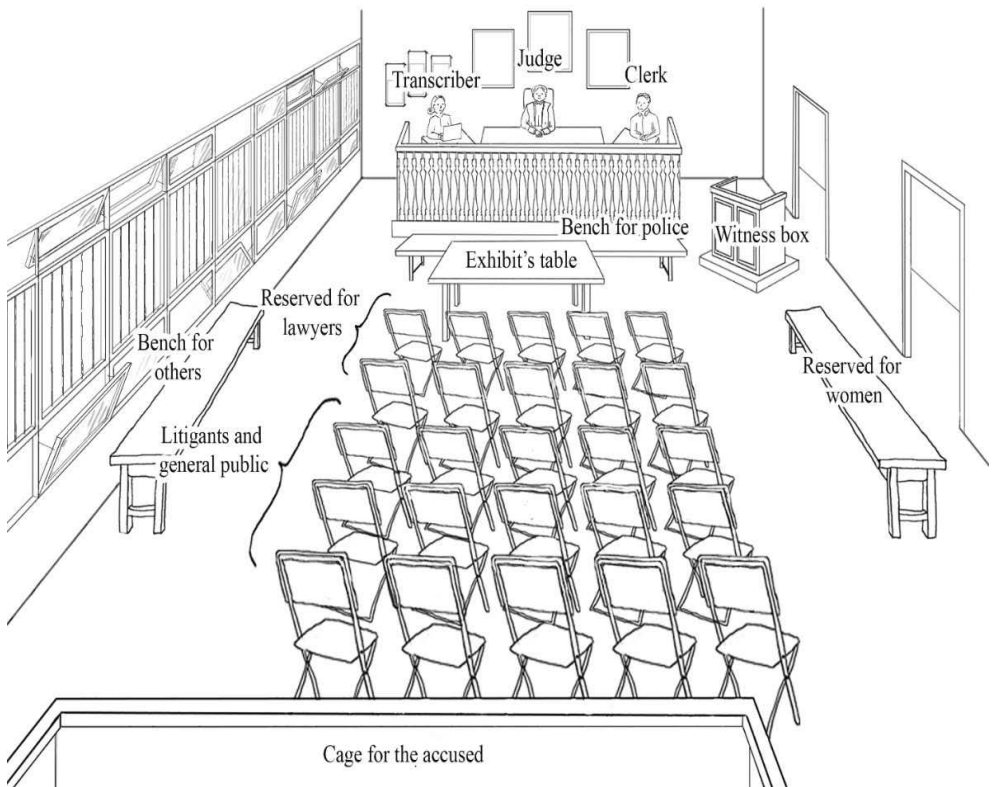
To 'hear', as I discovered, was a challenge. It is these sounds that would commonly be described as 'noise' that made it into the courtrooms. 'Noise' is what slips in where it is not permitted. Noise, James Parker argues, does not exist in itself but in relation to where it is inscribed.<sup>212</sup> So, in relation to what should be 'heard' in court - intelligible hearing and silence - chatter, traffic snarls and vendors screaming become noise. To give an example, for a thirsty person in a public space the vendor selling sweet lime water on the pavement would not qualify as noise, nor would a car that honked to alert its presence when one crosses the street, since it communicates and means something essential to the said person. The honking and vendor's call becomes noise when it creates dissonance, disharmony and disruption, both socially and in relation to other sounds.<sup>213</sup> From the perspective of the court, the 'noise' of traffic, of chattering litigants and lawyers do not interrupt the trial, however they make the court proceedings 'inaudible' for a certain section of the audience, depending on where they are located in the courtroom. Sitting in the public seats, the outside sounds disrupted the courtroom proceedings for me, since I strained to hear or could not hear what was being said. What makes certain sounds noisy is essentially that they have no business to be there, and instead of adding to the communication they disrupt it.

As in all courts, the lower court I studied also regulated sounds. The faded printed sheets plastered on doors and walls make known the appropriate behaviour - "Keep Silence", "Don't spit", "By court order turn off mobile phones". That silence is crucial for the administration of justice was evident in the way every now and then a court clerk, a *paan*(betel leaf)-chewing stocky, balding man, would step out of the courtroom and shush crowds waiting in the foyer into silence. The foyer would fall silent for a few minutes, and then the noise would rise again. Much of the court ritualism of respect was like that - alive between intervals. Silence, if anything, was evasive.

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<sup>212</sup> James E. K. Parker, *Acoustic Jurisprudence: Listening to the Trial of Simon Bikindi* (Oxford University Press, 2015).

<sup>213</sup> Parker.



*Courtroom Illustration*<sup>214</sup>

Mulcahy in her monograph on court architecture shows how in the earliest illustrations of the court space there were four categories in a courtroom: the judge accorded the highest status sitting on a raised platform for higher ranking officials, then court officials of varying categories, and followed by lawyers and litigants as the third

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<sup>214</sup>Unlike the drawing, the lower court I studied was crowded and the above image of a neat, light filled room was not how the lower courts were. Typically, lawyers whose matters were to come up in the first half of the day would stand in the front rows after the seats would fill up. There were litigants standing everywhere in the courtroom since space was limited. The crowded courtroom would make the overwhelming heat worse, since the only air circulation was in the form of whirring fans and open windows on one side of the courtroom.

category, the last category was assigned for spectators, who were seated outside at the margins of the courtroom.<sup>215</sup> The magistrates are often the only people to occupy the aerial view of the court. The architectural focus is on the visibility of the audience, as opposed to that of the proceedings.<sup>216</sup> This gives the judge what Mulcahy calls “visual control”.<sup>217</sup> Victoria Brooks, similarly describes the spatial arrangement in court arranged vertically on the basis of descending power.<sup>218</sup> It is an arrangement, as she says, for the purpose of smooth and orderly functioning of the court organism.

Apart from establishing unquestionable authority and hierarchy, the seating ensures how voices reach the judge’s ears with clarity, since the isolation ensures both a visual and aural elevation free from ‘ambient noise’ encountered at the ‘ground’ level. In essence, how sound travels is an essential consideration for architecture, since it moulds the acoustics of a space. The magistrates are the only ones engaged in the act of ‘hearing’ who remain seated throughout the proceedings, unlike lawyers, who stand during proceedings with their backs to the audience. As Mulcahy points out, the spectators have an unhindered view of the judge but a restricted view of the proceedings.<sup>219</sup> In Indian trial courts, even the view of the magistrate is blocked by standing lawyers, who form a visual barricade between the spectators and the proceedings.

In the lower court, the spatial hierarchy ensured only certain voices were amplified, and only those privileged spatially heard what was being said. Seated in the back rows and pressed against the walls, litigants rarely hear the proceedings as lawyers occupy the front rows in the courtrooms. Courts regulate not merely who is heard, who sees and from where, but hearing itself is a position of privilege. Lowest in the spatial hierarchy, the place litigants occupy signifies their status in the legal system. The court determines who is heard and who hears,

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<sup>215</sup> Mulcahy, "Architects of Justice," 396.

<sup>216</sup> Mulcahy.

<sup>217</sup> Mulcahy, 396.

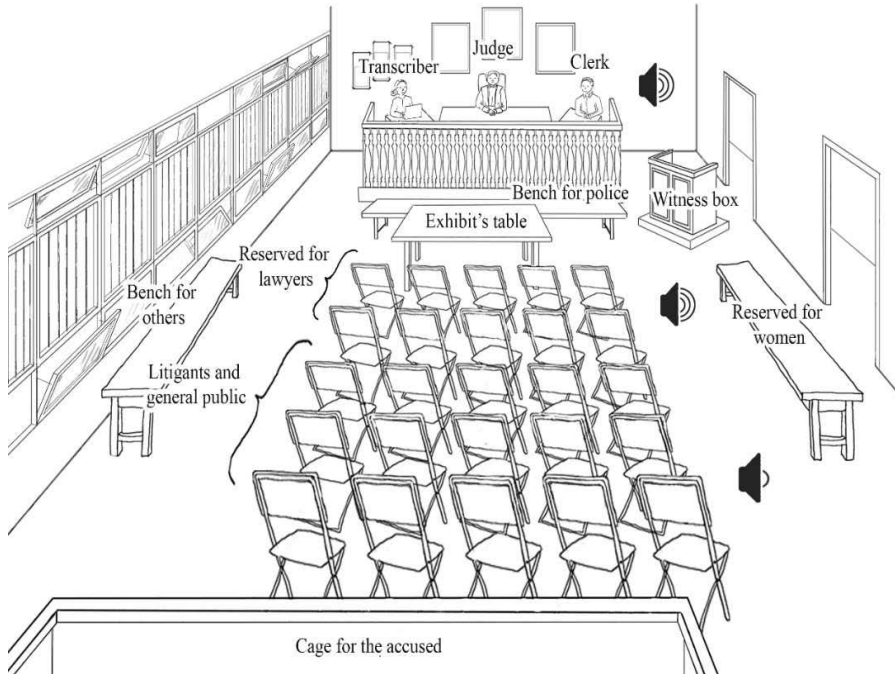
<sup>218</sup> V Brooks, "Interrupting the Courtroom Organism: Screaming Bodies, Material Affects and the Theatre of Cruelty." *Law, Culture and the Humanities*.

<[https://www.academia.edu/7741128/Interrupting\\_the\\_Courtroom\\_Organism\\_Screaming\\_Bodies\\_Material\\_Affects\\_and\\_the\\_Theatre\\_of\\_Cruelty](https://www.academia.edu/7741128/Interrupting_the_Courtroom_Organism_Screaming_Bodies_Material_Affects_and_the_Theatre_of_Cruelty)>.

<sup>219</sup> Mulcahy, *Legal Architecture*.



who partakes and who does not. The spatial design disempowers litigants and undermines their status in courts, but also reinforces the superior status of those foregrounded, namely the lawyers.



### *Courtroom Illustration*<sup>220</sup>

The spatial hierarchy is possibly why magistrates often discourage litigants from arguing their own case or intervening in the

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<sup>220</sup> The illustration above with the 'hearing symbol' is to denote from where the court proceedings are more clearly audible. The last row of seats fair badly in terms of audibility, and the first two rows where lawyers are seated and the bench for the police are where the proceedings are most clearly audible.

proceedings when they have a lawyer. The assumption is that if you have hired a lawyer, you have renounced the right to speak in court. "Why should you talk if you have a lawyer," a High Court judge I interviewed responded to my question of litigants being allowed to talk in courts. So, it is not uncommon for lawyers to snap at their clients attempting to speak during proceedings or ask them to leave the courtroom if they fear they would offend the judge or say something that may harm their case or undermine the authority of the lawyer. "Of course, as I go six steps higher my behaviour will change," admitted the same High Court judge.<sup>221</sup> This spatial privilege changes the nature of hearing and listening for magistrates, as the hierarchy is spatially etched and reinforced. Magistrates are thus trained to 'hear' and 'listen'. In his monograph on courtroom soundscape of the International Criminal Tribunal for Rwanda (ICTR), Parker observes how the experience of listening through headphones in the ICTR produces a highly individuated, and bureaucratic listening practice. He argues that the audio technologies do not just record proceedings in courtrooms, they change the sounds.<sup>222</sup> Sounds travel differently in different corners of the room, and at different times of the day, so for instance, the morning hours of the trial courtroom were sonically dense and demanding but as the crowds thinned out and the day progressed, courtrooms became comparatively more audible. The everyday rhythm of the city with its rush-hour traffic coincides with the everyday rhythm of the court, where all matters are called out, and only those 'kept back' for hearing, evidence production or an order are reserved for later in the day. Likewise, sound travels differently on the dais where the judge presides. The carrying of sounds and hearing them provides limited discretionary power to judges, but whether one listens or not is a matter of choice.

Spatial hierarchisation not merely disproves the maxim that everyone is equal before the law, but actively denies prestige and dignity. It enhances the acoustic disability faced by litigants. The demarcation of space is an "articulation of social, cultural and legal relations", argues Mulcahy.<sup>223</sup> It inhibits participation, but also actively

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<sup>221</sup> I had met the High Court judge on two occasions. The first time was during a private session with the litigant and her lawyer, when trying to convince her to agree to a settlement. The second time was an interview on 13 November 2014.

<sup>222</sup> James Parker, "The Soundscape of Justice Special Issue: The Laws of Technology and the Technology of Law" (2011) 20 Griffith Law Review 962.

<sup>223</sup> Mulcahy, "Architects of Justice, 386."

the lack of space for litigants is suggestive of the diminutive role litigants' play or should play in courts. Audibility in courts is intimately connected to where litigants stand, it is also coloured by what is underscored or disregarded in court. This denial of 'hearing' and 'witnessing' extends to the quality of legal aid most women users of courts can afford. It often also determines who is heard, what appears in court records, and which case is thought worthy of court time. While delay in cases and not being 'heard' was a common and recurrent complaint in my interviews with litigants, what was often overlooked was who was heard more and why did certain voices acquire greater audibility in courts more than others.

This demarcation of space and hierarchisation extends not merely to courtrooms, but to other areas of the court building – the segregated washrooms that are locked with keys by the court staff, canteens only for the use of court administrators like the staff and lawyers, and the common chambers where lawyers read, relax, store their files and use them as an office space. During the time I was at the trial court, the women's and men's public toilet was either locked or not functioning on many occasions, or in a complete state of disrepair. An extra toilet for men was available at the entrance on the ground floor, but none was available for women. A female litigant with a child who requested keys to use the toilet just after I had returned the keys on one of the court days, was denied access, with the explanation that the washroom was only for court staff and lawyers, and yet another woman who clearly came from an affluent background was given the keys to use the toilet.

### **A fair hearing**

"The invitation to speak in court fetishizes speech as the mark of legal empowerment."<sup>224</sup> Speech and being heard are cornerstones of the right to be heard. The right to be heard in law specifically entails the right to an impartial and fair hearing, and the right to be heard within a reasonable time. This includes the right to present one's case, access to legal aid, and access to submissions by the opponent. In criminal cases specifically, the accused has the right to effective participation, and is entitled to be present during the hearing and has the right to be legally represented and to give evidence. Do the submissions in court count as speech and its acceptance as being

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<sup>224</sup> Basu, *The Trouble with Marriage*, 230-232.

‘heard’? Almost all key legal texts define the right to a fair trial, such as article 14 of the International Covenant on Civil and Political Rights,<sup>225</sup> and article 6 of the European Convention on Human Rights.<sup>226</sup> The key principles for the right to a fair trial include: equality before the law and equal protection of the law. Thus, being treated equally is integral to the right to a fair trial. Additionally, it entails the right to an interpreter or being communicated in one’s language, being tried in a court of law without undue delay, or being heard within a ‘reasonable time’, having legal representation, and being provided an opportunity to defend oneself, and an impartial judiciary.

The right to a fair hearing though may comply with all the tenets of what qualifies as a fair hearing, and yet not be a fair trial. Can one have a fair hearing if all the requirements for a right to fair trial are fulfilled? A fair hearing does not necessarily imply ‘listening’. To attain audibility in law, and to be recognised that you are ‘heard’ also entails being legible in the written record of the law, i.e. to be taken seriously. This makes the definition of ‘hearing’ itself contentious. Does courtroom talk that fails to appear in the written record mean one has been ‘heard’ or not? And what about the right to be provided with an interpreter or communication in a language that one comprehends? In practice, ‘interpretation’ and ‘translation’ and their implications for ‘hearing’, as I demonstrate, are not straightforward matters. The language of law and procedural complexities, moreover, can make the trial inaccessible. That access to justice may be available within a ‘reasonable time’, or without delay itself are broad requirements of what is within a reasonable time, for who, and under

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<sup>225</sup> Article 14 of the International Covenant on Civil and Political Rights states: “All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.” Other aspects concerning a fair trial include presumption of innocence until proven guilty, to be tried without undue delay, communication in the language of one’s choice, legal assistance and an interpreter to be provided in court. For more, see "OHCHR | International Covenant on Civil and Political Rights," <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

<sup>226</sup> Under Article 6 §1 of the ECHR the right to a fair trial is found in both civil and criminal matters, and it stipulates that a fair hearing should be provided within a reasonable time by an independent and impartial tribunal established by law. For more, see "European Convention on Human Rights," 1950, 34.

which law. I discuss the many dimensions of what a ‘reasonable time’ means in Chapter Five.

‘Hearing’ in law, as I argue in this chapter, is far removed from the ‘hearing’ that women litigants describe. It is how this hearing translates and what it translates into sensorially that is of interest in this chapter. Following the definition of what is a fair hearing, the cases I pursued met the legal requirement of a competent and impartial judiciary, yet as far as the legal interpretation of the proceedings are concerned and what might be considered ‘within a reasonable time’ as defined by Article 6, the ‘hearing’ often fell short. A ‘hearing’ in court has many layers. This includes the trial where arguments are heard, cross-examinations are conducted, and replies and counter-replies submitted. A ‘hearing’ also includes what does not appear in the official record, that is, ethnographic observations of the courtroom, such as courtroom talk that includes clarifications, reprimands, rephrased replies, negotiations, and the multiple processes of translations. By translations I refer firstly to translation from the local language into English. Secondly, translating also entails converting ‘courtroom talk’ into the formal record of the law, thus erasing and expunging interruptions in speech, emotional outbursts, silences, converting courtroom talk into recognised legal categories, and reframing and rephrasing of cross-examinations into structured and seamless question-answer responses in formal speech. In her book on rape trials, Pratiksha Baxi discusses at length this silencing and expunging of courtroom talk from the official legal record.<sup>227</sup> By translating courtroom talk into formal legal speech and erasing what is considered superfluous to the facts of a case and to law, the translation converts courtroom speech into language and formality that is more befitting to the written record of the law, namely what is considered worthy for the court and for future readers to lend their attention to. The written record of the law is what is perused by higher and appellate courts, by judges and lawyers alike.

The trial exists in manifold linguistic worlds, from opening statements, arguments, cross-examinations and closing arguments, and the multiple translations reveal how the trial is what Robert P. Burns has called a “consciously structured hybrid of languages”.<sup>228</sup> The tensions created by this ‘hybrid of languages’ is what reveals the ‘true

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<sup>227</sup> For more see, Baxi, *Public Secrets of Law*.

<sup>228</sup> Robert P. Burns, *A Theory of the Trial* (Princeton University Press, 2001), 230.

law', writes Burns. The often competing meanings where translations bear little resemblance to what was said is another kind of hearing, or mis-hearing of what was said or not said. This translation of courtroom speech is yet another version of what happened in the case, since the first formal record of oral narratives that is reduced into an application by the lawyer and submitted in court to initiate a trial as a translation of narratives is done according to legal categories. Consequently, to be heard in law requires litigants to speak in the language of the law, though as I will demonstrate. this 'hearing' may be entirely different from what the women litigants I followed expect. As Basu writes, "If you can speak in law, who can hear you. If you don't speak, can you be heard at all."<sup>229</sup> Speaking in law, as I argue, is not merely speaking in the language of law and in legal categories, for 'speaking within law' is itself a status of privilege.

In the everyday discourse of hearing among litigants, the right to a hearing often involves the right to speak and be heard in court. This does not include the right to access and file a complaint in court in written petitions, where arguments and openings statements are formulated and made by lawyers and heard in court. Instead, the hearing women litigants make a reference to is not to a hearing of the trial, but an opportunity to articulate the wrongdoing and violations in their own voices, language and an acknowledgment of this by the court. "I have not yet told my story yet", is a statement that encapsulates women's experience with courts and their desire to be heard. Even female litigants who have been granted interim reliefs might not be 'heard' in court or might be denied access to an understanding of the procedural aspects of the trial. The fact that 'violence' is never addressed in cases, and does not occur in the arguments except at the cross-examination stage itself questions the sincerity with which the court 'listens' to domestic violence cases. As Sameera, a 27-year-old litigant who I introduce in the following pages, described her experience of court proceedings: "I don't know what was said. There were just some documents that were exchanged."<sup>230</sup> The

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<sup>229</sup> Basu, *The Trouble with Marriage*, 59.

<sup>230</sup> Under section 12 (4) of the Domestic Violence Act the first date of hearing should be no later than three days after the receipt of the application in court.

court has not asked me anything nor have I got an opportunity to say anything. I just go and wait there for the whole day.”<sup>231</sup>

The tensions from the ‘hybrid of languages’ dramatically unfold in cross-examinations, where multiple languages, their conflicting meanings, and the manner in which the cross-examination is structured to ensure what the court ‘hears’ and ‘listens to’ comes into conflict with what witnesses (in this case the woman litigant) wants the court to ‘hear’. The dramatic unfolding reveals the conflicting and contested ‘truths’ that are lost in multiple translations of ‘what was said’ and ‘what happened’. The trial, as Burns points out, is already an interpretative understanding of a past event that has many sites and is “necessarily multivalent”.<sup>232</sup> Correspondingly, the multiple interpretative versions of ‘what happened’ and ‘what is of value’ reveal the complexity and incommensurability of the nature of a ‘hearing’ itself.

In this section, I will examine the dramatic tension that unfolds in cross-examinations in multiple languages. A hearing, as I previously claim, is not limited to the aural. Thus, the denial of hearing questions what constitutes ‘a fair hearing’. In the lower courtroom in Mumbai, three languages were used in most trials: Marathi (Maharashtra’s official state language), Hindi, and English.<sup>233</sup> All parties involved constantly switched languages through the trial. This includes cross-examinations, where the language used is determined by the witness being examined, and the questions for cross-examining may be framed in the language the witness is most conversant and comfortable with, but can switch to English or Marathi depending on the magistrate and the lawyer. It is critical to remember, however, that the switching of languages and the manifold translations cannot be presumed to be how multilingual courts function, as often the

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<sup>231</sup> The interview with Sameera on September 2015. She had already spent two years in courts without being granted any relief. *Field Notes from September 2015*.

<sup>232</sup> Burns, *A Theory of the Trial*, 231.

<sup>233</sup> The Supreme Court and the High Courts officially operate in English, that is, orders and judgements are written in English, and arguments are in English. Lower courts, especially district courts can use the state language as the primary language. Nonetheless, in all courts arguments take place in multiple languages or there can be switching of languages, such as the language of the presiding judge or the language of the state. This language switching is common in everyday courtroom talk.

constant switch in languages by lawyers is also an attempt to deny access and knowledge to the witness of what is being said and exchanged between the lawyer and a magistrate. Given during the cross-examination witnesses stand in the witness box and are not within the reach of their lawyers and cannot be appraised or prompted by their lawyers, the failure to understand the exchange in court becomes a legal strategy to confuse and intimidate witnesses and deny them participation. This code-switching and speaking in legalese, especially to witnesses being cross-examined, is often objected to by witnesses' lawyer and judges alike. I am going to start with one such cross-examination that I recorded.

I met Farzana through Hina. She had filed a domestic violence application claiming for monetary relief two years ago. Farzana was a graduate in Bachelor of Arts and in her early 20s. She had received a small sum of interim relief and was currently living in her parent's home along with her married brothers. Both her brothers usually attended the court hearing with her. The cross-examination was previously delayed on three previous dates.<sup>234</sup> As the cross-examination was about to start, Manju, her lawyer, argued in Marathi for an 'in-camera' cross-examination. By this Manju implied not in-camera proceedings, but a cross-examination not in an open court but behind closed doors with just the lawyers and the parties concerned present, Manju reasoning that Farzana was scared and nervous. The Magistrate rejected the request after the other side lawyer raised an objection, stating "I'm not asking any embarrassing questions." The cross-examination was thus held in a fully-packed courtroom after lunch hour. Farzana had spent the morning in the back rows of the courtroom reading through her files.

This was the first time that Farzana had stood in the raised wooden witness box adjoining the Magistrates' table overlooking the audience. Her head bowed down, she held onto her faded green plastic bag that contained her case files.<sup>235</sup>

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<sup>234</sup> I continue Farzana's story and waiting experiences in court in Chapter Five. There I specifically catalogue her 'wait' and the delay in her cross-examination.

<sup>235</sup> *Field Notes from October 2014.*



*AL: applicant's lawyer*

*RL: respondent's lawyer*

*M: Magistrate*

M: What is your full name?

F: Farzana Khan.

M (*in Hindi*): Swear in the name of God and say you will tell the truth.

F (*mumbles under her breath*): I swear (*kasam*).

M (*in Hindi, repeats*): Say in the name of God you will tell the truth.

*Farzana mumbles but does not say 'khuda' (God).*

M: You don't want to tell the truth? (*Sach nahi kehna hai ? Looks at the litigant. Farzana looks on without saying anything. Farzana nods.*

M: Say in god's name (*Khudha kahiye*).

F (*barely audible*): I swear in the name of God that I will tell the truth. (*Main khudha ki kasam sachh kahunghi*).

Farzana refused to swear on the holy book. The intervention by the Magistrate to ensure that she swears on the Quran prior to the cross-examination was surprising, given in most cases the oath is usually rushed over and rarely attracts any attention. The question by the Magistrate about whether Farzana was not inclined to tell the truth was finally what forced her to perform the swearing procedure. The performative felicity of speech acts where words do things, that is by uttering something one is performing it or what J.L. Austin called speech acts, specifically unfolds in the oath taking ritual that all witnesses must undergo.<sup>236</sup>

The linguistic power of the oath swearing, and its felicity is specifically what Farzana attempts to circumvent by swearing without saying 'God' or without clearly uttering the said words or mumbling under her breath so as to be barely audible. The Magistrate's insistence on the words being repeated word for word, and audibly if anything underscore the performative linguistic power of the swearing procedure. It was only after Farzana had repeated clearly and audibly

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<sup>236</sup>Austin, *How To Do Things with Words*.

that the Magistrate proceeded to translate the oath into English to the transcriber. Although the Magistrate questions Farzana's intention to not tell the truth when she intentionally fails to repeat the oath, the sincerity between the words and the obligations attached to it are rarely questioned. In most cross-examinations I witnessed, oath taking was a ritual that was rarely questioned, or required any intervention. Yet, as it turned out, the oath was critical to proceed, as the power of the oath and that 'words do things' in Austin's sense came to a head in Farzana's refusal to swear. Writing on the oath ritual that precedes witness examination, James Parker similarly writes, that it is not the sincerity that is essential but the submission to the institution and authority that matters most. In repeating the words out loud in court in the presence of a judge and in an open court the procedure becomes a submission that is enacted "by means of one's speaking body: resonant and audible".<sup>237</sup>

Subsequent to the spoken oath, the cross-examination proceeded with Farzana's husband's lawyer Sarab asking Farzana what her preferred language for the cross-examination was. Farzana responded she prefers Hindi.

**Respondent's lawyer (Sarab) (*in Hindi*):** In what language should I ask the questions?

**F:** Hindi.

After initial questions where the lawyer asks Farzana about her education, and how her marriage was arranged, the lawyer switches to English.

**Respondent's lawyer (Sarab) (*in English*):** If I say 18 November marriage happened is that right?

*Farzana stands quietly and does not respond. She stares at the lawyer.*

**Respondent's Lawyer (Sarab) (*in Hindi*):** Do you not know that your sister in law was married before you?

**Farzana:** Yes (*Ha*).

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<sup>237</sup> Parker, *Acoustic Jurisprudence*, 2015, 141.

Magistrate (*dictates to the transcriber in English*): It is correct I did not know that my sister-in-law was married before.

Respondent's Lawyer (Sarab) (*partly in English and partly in Hindi*): Did you know that she lived in Mahim? I am saying that you are lying, you knew that she lived in Mahim.

Respondent's lawyer (Sarab) (*in Hindi*): You are lying.

Farzana (*mumbles*): No.

Magistrate (*in Hindi*): I can't hear, say loudly.

Manju (*in English*): Your ladyship, she is scared.

Magistrate (*visibly irritated and responding in English*): What is there to be scared! You don't want me to take the cross?

*The Magistrate looks at Farzana with irritation and says in Hindi:*  
"There's nothing to be scared about. If you do not respond the case will not go ahead."

At the start of the cross-examination, the trial lawyer asked Farzana about the language she would prefer the cross-examination to be in. Despite stating that her preference would be Hindi, the lawyer switches to English and Marathi without providing any explanation. Manju, her lawyer, does not protest when the languages are switched in mid-cross-examination. In places where Farzana responds, and then asks that the question is repeated, the cross-examining lawyer tells her that the Magistrate has already taken her response in record. 'Already 'taken in record' here implies that the record cannot be denied or erased. The multiple translations and the structure of the cross-examination where monosyllabic responses are converted into formal complete sentences already change the nature of the responses and what was said since words are not recorded verbatim. The Magistrate changes the nature of the response, first by translating it into English and then into formal passive sentences that are usually different from a colloquial response. The written record of the cross-examination is available after a few weeks. There is no audio recording of the cross-examination. The Magistrate dictates both the questions posed by the cross-examining lawyer and the responses by the witness.

Respondent's Lawyer (Sarab) (*in English*): I am saying that the dowry was bought for your brother not for you.

*Farzana nods without saying anything.*

*After a few seconds, Farzana asks him to repeat the question. Her lawyer at no point intervenes.*

Respondent's Lawyer (Sarab) (*in English*): Madam, has already made the entry.

Magistrate: What question?

Respondent's Lawyer (Sarab) (*in English*): I am saying that the dowry was bought for your brother not for you.

*(Repeats the question reluctantly.)*

Farzana (*in Hindi*): No, this is a lie.

Magistrate (*translating into English for the transcriber*): It is not true that the dowry was not bought for me but for my brother.

As shown here, language, especially in cross-examinations, is used to obscure and confuse witnesses. Often questions begin in one language and then the lawyer switches to another language to either communicate something to the Magistrate or to ask questions in a language that the witness may not fully comprehend. Here, Sarab, the respondent's lawyer intentionally misleads the witness on a number of occasions. By referring to paragraphs in the application to which the witness had no access to standing in the witness box, he further confuses and terrifies her, ensuring that what comes out on record is contrary to what she had admitted in her affidavit. The multiple languages, above all, provide the lawyer with an easy cover to switch languages to confuse and intimidate the witness, this along with the procedural requirements of recording and the strict script where the oral examination has to follow the written submissions, adds further confusion to the proceedings. To my surprise, Farzana's lawyer did not intervene, especially given that Sarab had a particularly questionable reputation in the court. On the following day of the cross-examination, Sarab approached me to say he was pleased with his cross-examination, boasting how well he had done although he felt bad for the witness.

Pat Carlen has suggested that courts paralyse its non-regular users.<sup>238</sup> The presence of strangers in the audience, along with the

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<sup>238</sup> For more, see Pat Carlen, *Magistrates' Justice* (M. Robertson, 1976), 12.

formal architecture of courts that create distances in the courtroom that disrupt conversational practices, are both intimidating. People in everyday discourse generally talk in intimate and closed spaces, rather than narrating personal information over longer distances as in courtrooms. Moreover, newcomers to such proceedings are unaccustomed to the language style of courtrooms. The Magistrate ordered Farzana's husband to stand behind his lawyer out of her field of vision. That did not help matters, however, as the question-answer format of an examination does not allow the witness to put in additional facts or details that may benefit the case. The witness has to respond to what needs to be 'heard'. In all cross-examinations that I observed, magistrates discouraged the witnesses' natural tendency to provide details that were not asked for. Given that this is the only time that litigants' 'voices' are heard in courtrooms, most litigants during cross-examination articulated their desire to talk to the judges directly or provide details that may not have been sought.

**Respondent's Lawyer (Sarab) (*in English*):** I am saying that these dates and months in the application are with the help of lawyers.

**Magistrate:** Mention specifically.

**Respondent's Lawyer (Sarab)(*switching from English to Marathi, which the witness does not understand*):** The contents of paragraph 7 of the affidavit are a lie. It's not in the application.

The search for 'authentic' and 'unmediated' narratives of violence where no details are added with the help of lawyers is ironical given that the cross-examination itself is mediated and translated into another language, and into passive sentences that contain the formal solemnity expected of law rather than everyday conversational style. This translation from informal conversational style into formal passive sentences changes the nature of what is heard. Since the official record of the law does not resemble 'word-for-word' what the litigants actually stated in court. Naturally then, the official record of the law is partial to a certain kind of 'hearing', and does not record what is actually being said. The court puts on record what it considers to be of value and what adds to or sheds further light on the facts of the case.

In the episode above, Farzana did not understand the suggestion the cross-examining lawyer had made, although her lawyer Manju objected and contested the suggestion made by him. He wrapped up his cross examination by implying that Farzana had falsely deposited, and that the Magistrate had that on record. Quite frequently, I could barely hear Farzana, who, standing in the witness

box, appeared terrified. The public spectacle of her cross-examination, and the spatial elevation of the witness box, placed in the corner of the room facing the Magistrate no doubt did not help. Srimati Basu in her ethnographic study of family courts in Kolkatta, writes how courts are suffused with the “tension and terror of public spectacle.”<sup>239</sup>

The Magistrate heard the cross-examination in three constantly changing languages. This obfuscation, however, was not merely linguistic. Cross-examinations are structured to obtain the answers ‘Yes’ or ‘No’. The result is that the witness is not allowed to add details or provide any explanation. The narrative of the cross-examination that becomes the formal written record of the court has a story of its own to narrate, independent of the facts of the case. It is the story that cross-examining lawyers want to extricate for the benefit of their clients, and to present a certain side of the story. Add to that the three languages spoken at the trial and the constant switching between them litigants in the witness box understandably become nervous. The court records the proceedings in a different narrative structure than that of the cross-examination, usually in English, which often may not be the language that the witness has been cross-examined in or that the witness understands. Further, the cross-examination format involves playacting, where the cross-examining lawyer feigns a lack of knowledge about the details of the events that transpired and poses questions to the witness to draw out answers that may be contrary to what has been stated in the application or affidavit. Questions are framed in a way that only monosyllabic answers can be given by the witness. So, typically the magistrate will record a monosyllabic answer of Yes or No in passive sentences using double negation, making the response confusing and overly complex.

For every monosyllabic answer given by the witness, the magistrate dictates the recordings to the transcriber into English and in a passive formal sentence. In the case above, Farzana did not comprehend English completely nor did she understand that the question was misleading. Though a lawyer can object to the record during the proceedings. The hearing then is not limited to what the court hears, but what is recorded in the formal legal record.<sup>240</sup> What

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<sup>239</sup> Basu, "Judges of Normality."

<sup>240</sup> What appears or does not appear in the court record is critical, for that is the final record of the case. It is not only a formal legal record of ‘what happened’, it is also what a magistrate will rely on when arriving at a verdict after perusing the court files. In “Justice is a Public Secret”, sociologist Pratiksha Baxi demonstrates how the story that unravels in courtrooms is

goes on record is critical to how the case progresses and how it is read in the future by the magistrate actually presiding over the case or a later judge who may preside over the case in the future.

I attended a cross-examination of a 30-year-old Catholic woman (Sharon), who was unable to follow the structure of the cross-examination. Sharon lived close to the court with her father, who often accompanied her to court. She had already received an interim order. She had a job, but in court claimed not to be working. Her responses to the cross-examination did not conform to the usual expectations of legal process, for she responded to questions with other questions and failed to playact that this was supposed to be the first encounter of the lawyer with her narrative. Her unintentional act of resistance in this sense denied what the court wanted to hear.

**Respondent's Lawyer (*in English*):** In paragraph 5 you said that after a month my in-laws started troubling me for a dowry.

**Sharon (*referring to the Magistrate as madam*):** Yes, madam, after 8 days of marriage here.

**Magistrate (*dictating to the transcriber in English*):** It is correct, that after one month of my marriage my in-laws started troubling me for a dowry.

**Respondent's Lawyer (*in English*):** There is no police complaint for that.

**Sharon (*often looking at the Magistrate while responding, though the Magistrate does not look her way*):** Yes, as a newly-wed woman, how can I?

**Magistrate (*in English*):** Just answer the question. What are you being asked? Don't give a question to a question.

**(*looks at Sharon's lawyer and asks in Marathi*):** Did you not tell her what is a cross-examination?

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transformed in the process. She observes that the everyday violence of the spoken law, with such questions as how long were you raped for, did the accused ejaculate, was the penetration complete, are silenced in or effaced from the legal record. For more, see Baxi, *Public Secrets of Law*.

*(Magistrate irritated with the witness and the lawyer, addressing Sharon in English):* How does he know what happened in your case? You have to tell him.

### Listening and hearing

In the transcription of the cross-examination the scolding by the Magistrate was left out. The recording effaces any instances that are deemed improper. Hence, courtroom talk, such as sarcasm, insulting comments directed at women, the reprimanding of the magistrate and the irritation at the litigant being scared do not appear in the official record of the case. Pratiksha Baxi in her study on rape trials in a Gujarat trial court in India, writes how courtroom talk is effaced from the formal legal record, such as enacting of the rape in a courtroom or the taunting or shaming of the rape victim.<sup>241</sup> What it is replaced with is a formal recording of the proceedings that read nothing like what took place in the courtroom. When cases are read, what we see, read or hear are not the voices of the parties concerned, but the formal record of the law, of how it should be spoken or how a legal proceeding should materialise. Judgements offer few or no insights into what transpired in the courtroom or how the verdict was reached. How a magistrate reprimands a lawyer for misleading, or scolds a witness for not responding to a question or failing to understand how a cross examination functions is not recorded.

The 'hearing' by the court, then, is not just the *sunwayi* (hearing), but what the law takes into its record. After all, what the law records is what is worth listening to. The court file of the case is the formal account of the law that goes beyond the hearing since what is recorded on file is an acknowledgement on the part of the court of what it listened to and of what is of value and relevant to the law. As Cornelia Vismann points out, the file functions as a recording device. Files are everywhere in the courtroom – under the tables, on top of cupboards, piled up one on top of each other. They are not, however, silent bystanders to the courtroom proceedings, for they record what the courts listen to. What is not in the file did not happen.<sup>242</sup> It was, as Vismann notes, only in the twentieth century that the inaccuracy of

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<sup>241</sup> Pratiksha Baxi, *Public Secrets of Law: Rape Trials in India*. (OUP, 2014).

<sup>242</sup> Mayur Suresh writes about the power files yield in a criminal case; if it is not in the file it did not happen. Mayur Suresh, "The File as Hypertext," *Law, Memory, Violence: Uncovering the Counter-Archive*, 2016, 97.



files became apparent with the availability of modern technology.<sup>243</sup> Yet, what is in the file or the formal record of the law is never put to test or contested in the court. It is simply believed to be true; in the files facts become facts. The law, as Vismann points out, works with files and “creates itself from them” but does not comment on its own record.

Writing about mistranslations in the family courts in Kolkatta, Basu observes a similar tidying-up of court records so that contain none of the ‘jaggedness’ of courtroom speech survives. She writes: “Voices are made to be appropriate, forcefully. Litigants are reminded that a deposition or witness testimony is a form of iteration, not a speech act in itself.”<sup>244</sup> These translations, additions, alterations in excess of what the witness deposes introduces new meanings, and the translations into English fail to represent the multiple languages in which the case unfolds.<sup>245</sup> In addition to altering what litigants say, they almost ‘un-hear’ what was said.

Listening in law acquires ‘legibility’ when the spoken word is re-represented in the official documents of the court. Unlike ‘hearing’, which may or may not appear in the written record, listening is more about ‘legibility’ and the practices of making yourself ‘legible’ in law. The women litigants in my study did not refer to this kind of listening that acquires ‘legibility’ in law, such as submitting affidavits, challenging or appealing against a court order or submission of documentary evidence that are necessary procedural stages to ensure the fairness of the trial and the progression of a case. Instead, they referred to receptive empathetic ‘listening’ by the court. Hirschkind describes listening as a complex sensory skill as opposed to just hearing that is passive;<sup>246</sup> it requires intention. For the pious Islamic listeners of his study, listening involved a state of “ethical receptivity”<sup>247</sup> that entailed the development of the “body as an auditory instrument”,<sup>248</sup> that is, what his participants called ‘listening with the heart’. It is the

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<sup>243</sup> Cornelia Vismann and Geoffrey Winthrop-Young, *Files: Law and Media Technology* (Stanford University Press, 2008), xii.

<sup>244</sup> Basu, *The Trouble with Marriage*, 86.

<sup>245</sup> Basu. *The Trouble with Marriage*, 86.

<sup>246</sup> Hirschkind, *The Ethical Soundscape*.

<sup>247</sup> Hirschkind, 70.

<sup>248</sup> Hirschkind, 79.

'listening with the heart' that lawyers referred to when they discussed whether the judge was 'given to emotion' or sympathetic to the cause of women's rights.

The courtroom I studied actively discouraged women from speaking when they were represented by lawyers, although the law empowers litigants to fight their own cases to decrease the costs of engaging a lawyer. However, the act of being heard in court is more than just seeking relief. As mentioned previously, the High Court judge I interviewed admitted that often women just want a platform to tell their stories, but she discourages women from arguing their own case because it 'wastes' court time, since unnecessary details are brought to the court's attention. These narrations are seen as not benefitting the case in any way and are seen as wasting the time of the court. It is said that a trial is a 'hearing', that a court should 'hear' voices. But, these voices are those of lawyers. How stories are told and what is told when is the prerogative of lawyers. For litigants, a cross-examination is often the only opportunity where they occupy centre stage and narrate their 'story'. This often means including details that are viewed by lawyers and judges as 'unnecessary'. The word commonly used for courts is a 'hearing'. *Aaj meri sunwayi hai* (It is my hearing today), litigants often say. A words like *sunwayi* (hearing), implies that the function of a court is to provide a platform where one is heard. The process of the court and the narrative of the trial is expected to be that of audibility. Yet, in the anonymous space of a crowded, public courtroom, women are rarely 'heard' or 'listened to', even if they manage a favourable verdict.

## Conclusion

A 'hearing' in court takes place within fixed hours. Once the magistrate presides over the court, his or her task is to 'hear', to 'listen' to what is being said. 'Hearing' one can say is a judicial obligation. Persuasion and rhetorical flourishes are keys to a successful legal practice and to wining cases. Most lawyers will admit, however, that they argue cases depending on who is listening and what kind of judge is presiding over the case. Is the judge likely to give a favourable 'rational' verdict or give in to 'emotion'? Is the judge known to give favourable verdicts to women litigants? Not surprisingly, lawyers often delay a case by taking adjournments if they know that the presiding judge would not deliver a favourable verdict and is likely to be transferred. In Aristotelian terms, the listener is one of the key elements in speech making, other than the speaker and the subject. It

is the hearer, as Aristotle observes, that determines the end and the object of the speech-making or argument.<sup>249</sup>

Having said that, the onus of being heard in court is on the speaker; if you want to be heard, you have to be audible and legible. Judges say what they want to say, and hear what they want to hear. The inaccessibility of the 'law' I experienced in the court is almost Kafkaesque. Visman points out that in Kafka's short story "Before the Law", the inaccessibility of the law and of the story determine each other, since both are ambiguous and beyond interpretation.<sup>250</sup> The gate to the law, like law itself, holds promise and has lured the man of the country into gaining access, but the law in this case cannot be heard. Kafka's metaphor of the gate and the gatekeeper suggests that the unreadability and inaccessibility of law rests upon the sense of sight. Gates or borders serve as potent metaphors for admission, inclusion or exclusion. The sight of the gate and the 'gatekeeper' of law conjures up images of inaccessibility. As Paul Raffield writes, the gate and the gatekeeper are essential to reinforce the grandeur, stature and promise that 'law' holds, but also serves as the "immutable determinant of access to law", adding that a gate is a recurrent and resonant symbol of law.<sup>251</sup> Kafka does not waste words describing the gate, though he does suggest the 'illumination' of breaking through the gates. Instead, he writes about the gatekeeper in his fur coat with his large pointed nose and black Tartar beard – clearly an imposing man who towers above the man from the country. In fact, the gates of law are open in the story; it is the gatekeeper who functions as a symbol of the impenetrability of law.<sup>252</sup> But who are the gatekeepers of law – the legislature, the judiciary and the lawyer? Vismann, refers to the preamble of a legislative text as an interpretative gate that articulates what the law 'endeavours' to do. Like gates, it guides the application of the law and how it should be accessed.

If law was visible, how would Kafka show it, especially, in a textual representation? And would law look the same to all of us? As

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<sup>249</sup> For more, see Mark Stoner and Sally J. Perkins, *Making Sense of Messages: A Critical Apprenticeship in Rhetorical Criticism* (Routledge, 2015). Rodney K. Duke, *The Persuasive Appeal of the Chronicler: A Rhetorical Analysis* (A&C Black, 1990).

<sup>250</sup> Vismann and Winthrop-Young, *Files*.

<sup>251</sup> Paul Raffield, *Images and Cultures of Law in Early Modern England: Justice and Political Power, 1558-1660* (Cambridge University Press 2004).

<sup>252</sup> Vismann and Winthrop-Young, *Files* 16-17.

there is no universal way of perceiving or knowing law, it would no doubt look different to Kafka than to say a court functionary. Consequently, Kafka fittingly leaves the law to our own imagination. Just as each sense advances its own notion of the law, law is accessible or inaccessible in more than one way. In the courtroom I studied, it was 'ear' that I had to attend to more than other senses. This is not to imply that senses work independently of each other, if anything, as many other scholars have observed, our sensory experiences do not work independently of each other but are interconnected. To speak of hearing as something only attained through our ears or to assume the universality of our hearing is questionable. Hearing, just like other sensory experiences, is grounded in what Hirschkind calls cultural practices that give them meaning.<sup>253</sup> Hirschkind argues that our sensory receptivity and our capacities are shaped by a disciplinary context or are informed by a specific community we may be a member of.

Hearing in most of these cases fulfils the tenets of a fair hearing. Yet, given cases rarely finish within the prescribed time and the interpretation of and access to proceedings remain out of reach, the fairness of trials is seriously in doubt. It is little wonder then that most women leave courts disgruntled by a long-drawn out and complicated legal system, even if or when they receive relief. The quality of legal representation they have access to is equally suspect, especially in lower courts where litigants do not have deep enough pockets, and legal 'superstar lawyers' rarely make an appearance. Marc Galanter for instance, has argued that, the 'grand advocates' who are praised for their legal prowess rarely appear in lower courts. It is they who exercise 'control' in how the case progresses, or how to secure an interim relief in a slow-moving legal system through the use of "human capital they have developed within the court system and their nuanced knowledge of both formal and informal judicial procedure".<sup>254</sup> Lower trial courts, thus, are replete with lawyers who have little experience, poor lawyering skills, and little motivation owing to the poor monetary benefits. Women litigants, often owing to their limited finances fare worse than men in litigation. The legal representation they can afford is of poor quality. At least two women litigants I came to follow, Zarna

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<sup>253</sup> Hirschkind, *The Ethical Soundscape*, 97.

<sup>254</sup> For more, see Marc Galanter and Nick Robinson, "India's Grand Advocates: A Legal Elite Flourishing in the Era of Globalization," SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, 1 November 2013), <https://papers.ssrn.com/abstract=2348699>.

and Sameera, had changed lawyers owing to their dissatisfaction with their previous lawyer. This included factual mistakes in drafting the application or failing to appear in court on appointed days. Corruption among lawyers who are paid off by the complainant's husband and corruption among magistrates is something of a 'open secret' that lawyers I spoke to shared in confidence.

A 'hearing' in many ways resists being defined. What hearing do we refer to when we speak of *sunwayi* in court? Is it the one that the law stipulates? Is it where litigants are accorded time, dignity and space to articulate their grievances in plain language? The constant reference to 'divine justice' and 'the last judgement' in courts when magistrates and lawyers persuade litigants to 'settle' tells if anything the inherent limitation to the 'hearing' and justice that can be provided by courts. A 'hearing' by its nature, and its reliance on language and the senses, cultural proclivities, class, etc., resists being defined.<sup>255</sup> Describing the listening practices with sermons, Hirschkind draws attention to listening as a responsive act that recruits the sensorial attention of both the listener and the speaker.<sup>256</sup> For, how can I attest to hearing except with my own hearing? The 'listening' and 'hearing' in law requires responsiveness from the speaker as much as from the listener.

In this chapter, I have argued that 'hearing' is hinged on the basic premise of how we all sense law differently. It is understood that how we know is the only way we can know. And much of this also centres on why is the law sought for in the first place or what have people come before the law for. The litigants who struggle to be heard or make sense of what is being said have an individuated experience of the law. A 'hearing' is a complex process, it involves not just what the law is hearing but also entails how and what we hear when the law

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<sup>255</sup> I borrow this 'resisting' to hearing from the literary theorist Paul de Man, where he writes about the impossibility of theorising literature and how theory resists its own definition. The resistance, he writes, is to language itself and how because of the nature of language it is not possible to reduce it to 'intuition'. The assumption that when we refer to language we know what we are referring to is itself misleading since the word 'language' itself is self-evasive, he writes. This resistance does not apply to theory alone though, but almost to all that is perceptible and 'outside' of ourselves. When I talk of hearing, then, the very nature of hearing and what constitutes a 'hearing' itself evades an undisputed universal definition. For more, see Paul de Man, "The Resistance to Theory," *Yale French Studies*, no. 63 (1982): 3–20, <https://doi.org/10.2307/2929828>.

<sup>256</sup> Hirschkind, *The Ethical Soundscape*.

hears. What we hear and what the law hears may not be compatible or commensurate with each other. For instance, the formal record of the law is attentive to a different kind of 'hearing' than what is heard in the courtroom, in fact it would appear to 'hear' what is not being said. It records in the language recognisable to the formal case recordings of the law, as I demonstrated the 'hearing' in a trial follows a trajectory of its own, and it has to hear what it has to hear to render the trial valid in law. Cross-examinations illustrate this. Their fixed structure of questioning renders only a particular kind and structure of narration and 'hearing' possible.

At no point am I suggesting that the 'hearing' required here is of one kind. Its complexity is revealed in the many layers that we have to attend to. Opposed to the audio-technologies used in modern courtrooms, such as cameras, mics, recording devices along with sound-proofed doors that stop outside 'noise' from creeping indoors, the courtroom I refer to appears less discriminatory when it comes to the outside world. Brooks suggests that interruptions in courtrooms can function as an act of de-territorialisation, by 'interruption' she is not referring to disruption of the legal process, but that each interruption may result in a rearrangement and resistance that it ceases to be perceptible to be an interruption.<sup>257</sup> In the case of listening, though, the interruptions of the courtroom pass by imperceptibly since the law listens to what it wants to listen to. To direct the question Erlmann poses about the ethnographic ear, this chapter was an attempt to respond to the questions why do we need to bother about the ear<sup>258</sup> and how imbricated is the act of hearing to the project of justice.

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<sup>257</sup> Brooks, "Interrupting the Courtroom Organism, 20."

<sup>258</sup> Erlmann, *Hearing Cultures*.

## Chapter Four

### How do lawyers know

In this chapter I show how law hones a ‘lawyerly sense’ and how lawyers ‘make sense’ of ‘truth’, and how the ‘legal sensing’ lawyers I refer to are tied to how stories are told and retold in narratives. Narratives must be ‘narratively believable’, observe Anthony G. Amsterdam and Jerome S. Bruner. Thus, in order to access law narratives they must be scripted following the requirements of adversarial proceedings. In this chapter, I examine the practices followed by lawyers in assessing and sifting through claims of violence on a day-to-day basis. The question of how lawyers recognise ‘real’ or ‘truthful’ claims from false ones frequently came up in my conversations with lawyers I closely followed and with lawyers I interviewed during my fieldwork. In referring to their ability to recognise true victims from false or dubious ones, lawyers did not rely on any kind of documentary proof, instead they referred to the legal sense they acquire in their practice in courts. I closely examine this ‘legal sensing’ that lawyers referred to and argue that the practice of law hones a certain ‘narrative sense’, namely what stories are believable and what kind of stories have a foothold in a particular culture.

Lawyers refer to how they employ and recruit their senses in determining truth claims. I examine this ‘legal sensing’ that lawyers referred to, and ask what does that mean when it comes to constituting facts in law and in establishing truth. I will explore what lawyers mean when they refer to how they can sense and identify truthful claims from false ones. In assessing their practice, I essentially relook at how narratives are told and retold. Clients tell stories to lawyers, who in turn convert the stories into legally acceptable narratives. These narratives demand coherence in which ‘truth-telling’ is often sacrificed, and instead lawyers look for ‘stories that fit’.<sup>259</sup> In adversarial trials, stories are ‘facts’ that appeal to evidence. I argue that ‘facts’ are created to appeal to a sense in law, namely a sense of legal normativity and what appears believable. Thus, as Briggs has pointed

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<sup>259</sup> Steven Lubet, *Nothing But the Truth: Why Trial Lawyers Don’t, Can’t, and Shouldn’t Have to Tell the Whole Truth* (NYU Press, 2002).

out, specific violence recruits specific narratives.<sup>260</sup> When the lawyers spoke of how they sensed true claims from false ones, they referred to an overall sensing that cannot be relegated to one particular sense, instead they referred to what appears believable in a particular culture and can be ascertained without doubt in courtrooms. 'Without doubt' does not rely on incontrovertible evidence, instead it relies on what is a believable narrative.<sup>261</sup> The vignettes below are illustrative of what happens to facts in adversarial legal proceedings and how the narratives women tell bear an imprint of what matters in law.

Stories, as I demonstrate, construct facts, and in turn it is how stories are constructed and how they unfold that persuade people to see what counts as truth. This legal sensing is an ability to assess what 'makes sense' and what is believable, such as can a marriage be good just for one night or can accusations of verbal violence hold in a courtroom? The legal sense then as I argue is whether a story is 'narratively believable'. This aspiration to make it 'real', Amsterdam and Bruner argue is when we subordinate the story for persuasion, and I argue this in turn influences how women can access the law.<sup>262</sup> Drawing on nine months of ethnographic fieldwork, I demonstrate how stories told by litigants are replaced by stories that count as 'truth', and what has persuasive value in court. This skill and need to make one's stories 'legally believable', further determines the access women have, or fail to have, to courts and to civil relief. In the pages that follow, I demonstrate how narratives change from what women 'want to tell to what women have to tell' in order to attain access to legal relief.

***Ankhon dekhi, kahno sunni*: Seen with my own eyes and heard with my own ears**

In the very first month of my fieldwork, I realised that no discussion on the Domestic Violence Act was possible without the all-pervading discourse of how women supposedly misuse the law. As I

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<sup>260</sup> Charles L. Briggs, "Mediating Infanticide: Theorizing Relations between Narrative and Violence," *Cultural Anthropology* 22, no. 3 (August 2007): 315-56.

<sup>261</sup> Anthony G. Amsterdam and Jerome S. Bruner, *Minding the Law* (Harvard University Press, 2009), 173.

<sup>262</sup> Anthony G. Amsterdam and Jerome S. Bruner, *Minding the Law* (Harvard University Press, 2009), 113.



have argued in Chapter Two, the term ‘misuse of the law’, especially in the context of the Domestic Violence Act, implies that women file false charges against men or falsely accuse men and their families of domestic violence to claim relief under the law. More specifically, with respect to domestic violence, the criminal section under the Indian Penal Code has been publicised as being misused by women.<sup>263</sup> The oft-repeated argument against the use of the woman-specific law is that it is mainly used to ‘grab property’ or manipulate and control the husband. That women file false cases, or women misuse the law was a statement that was often bandied around by practising lawyers I met in my fieldwork. But, how do you know and what evidence do you have, were questions I often found myself asking the lawyers I followed and interviewed in my fieldwork. In many of our conversations, they narrated anecdotal experiences of how they could distinguish ‘true’ stories from fabricated ones. These stories were stories they had amassed in the use of the law and from experiences their colleagues had narrated to them. The response to my questions was often that they had witnessed an event first hand or had dealt with cases where their women clients were trying to misuse the law. It was *ankhon dekhi* they would say, which translates as ‘seen with my own eyes’. This ‘seeing for oneself’ and attaching objectivity to sight is not new in law from an evidentiary perspective. It lends certainty and truthfulness to evidence, as opposed to hearsay evidence. Writing on anthropology’s reflections on evidence and the ethnographic record as some sort of objective evidence derived from ‘seeing’ first-hand, as opposed to ‘hearing’, Mathew Engelke adds, “So, what we say is subjective, while what we see is objective” (18).<sup>264</sup> Maurice Bloch, writing on the relation between truth and sight, comments that sight avoids the

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<sup>263</sup> For more, see Agnes Flavia, “Section 498A, Marital Rape and Adverse Propaganda,” *Economic & Political Weekly*, Vol. 50, Issue No. 23, 06 Jun, 2015; Shalini Nair, “498A, Battered,” *The Indian Express* (blog), 13 August 2017, <http://indianexpress.com/article/india/498a-battered-supreme-court-misuse-of-dowry-law-women-harassment-cruelty-sneha-sharma-allahabad-hc-4794220/>; Jaising, “PERSPECTIVES Concern for the Dead, Condemnation for the Living.”

<sup>264</sup> Matthew Engelke, “The Objects of Evidence,” *Journal of the Royal Anthropological Institute* 14, S1 (2008), <http://onlinelibrary.wiley.com/doi/10.1111/j.1467-9655.2008.00489.x/full>.

treacherousness and intentionality of the kind of language used in social life.<sup>265</sup>

Interestingly, though, when lawyers mentioned having ‘seen with my own eyes’ they were specifically talking about an oral story they had heard. Even when lawyers refer to a narration they heard rather than an aural referencing like ‘heard with my own ears’, their natural tendency is to refer to sight.<sup>266</sup> This referencing to sight also has much to do with how evidence is assessed. The term ‘evidence’ derives from the Latin word *videre*, which means to see. The natural tendency to refer to sight or ‘seen with my own eyes’ as something you can attest to goes back to the relevance and doubt that hearsay evidence occupies in evidence law. For oral evidence to be admissible, the law requires that oral evidence be direct, namely that it refers to a fact that can be seen or heard or perceived by a sense; it must be the witness who saw it or heard it, or perceived it through any other of the senses. The evidence has to be direct and from personal knowledge as opposed to being passed on.

Under the Indian Evidence Act 1872, oral evidence must be direct, that is, the witness should have perceived a fact directly either through his or her physical senses, that is seen it, heard it, or perceived it through any other sense.<sup>267</sup> It also includes opinions or the basis on which that opinion is held. Senses thus play a critical role in witnessing and narrating what is ‘witnessed’. This witnessing can be through any of the perceptual senses. Although, the word ‘witness’ itself has a visual suggestion, as something observed or seen, the law itself includes what witnesses may have perceived through any of the senses, including an opinion that may have been formed. As opposed to direct evidence, in

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<sup>265</sup> Maurice Bloch, “Truth and Sight: Generalizing without Universalizing,” *Journal of the Royal Anthropological Institute* 14 (1 April 2008): S22–32, <https://doi.org/10.1111/j.1467-9655.2008.00490.x>.

<sup>266</sup> When the lawyers refer to ‘seen with my own eyes’ what they are essentially referring to is an inference they have reached based on observation. Observation, as Neil Sargent notes, is different from seeing as “the ‘mind’ is also involved in the cognitive processes of sorting, storing, combining and retrieving the raw data from sensory experience”. For more, see Neal Feigenson, Visual logics of deduction: Ocular presence and ocular distance in Edgar Allan Poe’s ‘Purloined Letter’. in *Sensing Law*, ed. Hamilton et al., (Taylor & Francis, 2016), 91-108: 93.

<sup>267</sup> "The Indian Evidence Act, 1872," <https://indiankanoon.org/doc/1953529/>.

hearsay evidence, as Halдар sharply observes, the source of the hearsay information or statement cannot be verified through procedures of oath and cross-examination.<sup>268</sup> The law cannot thus verify statements or confirm its authenticity, since procedures of oath-taking cannot be taken into account.

Halдар writes elsewhere that hearsay evidence itself is a repetition of an original statement and that leaves the evidence open to uncertainty.<sup>269</sup> The witness's direct evidentiary gaze is therefore critical when arriving at verdicts in law. Recently, Sameena Mulla's study shows that the first step in a forensic examination in a sexual assault case is to interview and record the assault in the victim's words. It is this aural account, Mulla writes, that serves to train the nurse's gaze to look for certain types of evidence, such as dirt in the fingernails, gravel on the skin, injury to the genitals, and so on. This aural narration guides the gaze of the nurse collecting evidence, and this evidence can be recorded through a photograph, or sent on for further examination. This sifting and recording of the victim's words is a technique that lawyers also employ.<sup>270</sup> The vignette I present below is an illustration of how lawyers assess true claims from false.

In Chapter Two I introduced Hina, a criminal lawyer I closely followed. It was through Hina and her colleagues that I learnt which lawyers were 'ethical' or which judges were prompt and not 'corrupt'. In my second meeting with Hina in her office, she told me that the Domestic Violence Act is sometimes misused.<sup>271</sup> She immediately added, however, that she could identify a true case from a false one. "I know when a woman is saying the truth," she declared as we sat in her 25-square-metre office that stood opposite the courthouse where she mainly practised. In many of my conversations with Hina she mentioned how the law did not work as well anymore and receiving interim reliefs was getting trickier. Yet, she quickly added how the law

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<sup>268</sup> Piyel Halдар, "The Return of the Evidencer's Eye: Rhetoric and the Visual Technologies of Proof," *Griffith Law Review* 8 (1999): 86–101.

<sup>269</sup> Piyel Halдар, "Law and the Evidential Image," *Law, Culture and the Humanities* 4, no. 2 (June 2008): 139–55, <http://dx.doi.org.libproxy.helsinki.fi/10.1177/1743872108091471>.

<sup>270</sup> Sameena Mulla, "Sensing Sexual Assault: Evidence Truth Claims in the Forensic Sensorium," in *Sensing Law*, ed. Hamilton et al., (Taylor & Francis, 2016), 195–213.

<sup>271</sup> *Field Notes from 28 February, 2014*.

was also misused sometimes. “I only take the cases of real victims.” “How can you identify one,” I asked. “My technique as a lawyer is to first understand the gravity of the situation, then I ask her to write her story. Once it is written down I tell my junior to prepare a story out of it. I ask details of how the marriage was arranged, and if any dowry was taken.<sup>272</sup> I ask her (the woman) to write it down and come back and then more details will come out. All of this has to come from her mouth,” she pointed out.

“When the woman returns later I make her rewrite it. If there are any inconsistencies (*between the stories*) I know that she is not telling the truth. If in the various narratives oral and written I find the same events then I know it is real. If there is a mismatch, I know she is lying.” “But, how can you tell in the absence of any documentary evidence?” I asked. “After so many years of practice I can tell this much ya,” she smiled, nodding her head, “We can smell it,” (*soogh lete hai*), she gesticulated pointing to her nose. It was a response I had often received to my question, along with: “It’s easy. I can tell a real victim,” or “I’ve been in the profession for so long” or “I’ve seen it with my own eyes”. ‘Seeing it with my own eyes’ or rather ‘hearing it at first hand’ was sufficient evidence for them to draw their inferences. For most lawyers, evidence of a real victim lay in how women told their stories. The crux of this sensing of the true from the false rested on the seamless narrative control that litigants were expected to have. Yet, in the telling and retelling of the story, what Hina and her colleagues were determining was whether ‘there was a case’, that is, can a wrong be attributed to the respondent and is the woman ‘aggrieved’ according to a category of law? As Amsterdam and Bruner point out, the function of a narrative goes beyond just communication of information, in adversarial proceedings it is imperative to prove that a wrong has been committed as per the said law. Here when lawyers refer to ‘seeing with my own eyes’, they refer to what the narratives make visible. Does the story reveal the wrong done? Is it believable without any doubt? In fact, the visibility they refer to is whether the story is narratively visible what happened to the woman.

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<sup>272</sup> Under the Dowry Prohibition Act, 1961, a dowry is defined as “any property or valuable security” given directly or indirectly at the time of marriage or after or before the marriage from one party to the other party in a marriage. This includes the parents of either party, or any other person connected with the marriage. Dowry demands are also covered under the Domestic Violence Act when cruelty is concerned.

Narratives and oral renditions of violence suffered make what would have been invisible, visible to judges. Lawyers sift out stories that can be easily perceptible to the court. This recognising of stories that can easily translated into evidence of violence rests on whether the narratives met the legal normativity of what stories of domestic violence should sound like. It is here that the legal narrative and the crafting of facts to bolster the claims made by the woman concerned are made visible by the lawyer. In absence of visual proof of violence, narratives play the same role as ocular evidentiary artefacts do in law. Like visual exhibits, such as recorded images and videos, they can be replayed or seen again to ascertain that we see what we see. They can also draw the attention of the court to a certain fact, to coherence and consistency in narratives, and to faithful shadowing of the written statement in oral cross-examinations. All these can help ascertain the truthfulness of what is being said.

As previously pointed out, the lawyers I met did not rely on any external evidentiary document, like a police complaint, or a medical report of mental or physical abuse, in assessing the evidence of ‘real’ victimhood. Instead they relied on their intersubjective experience of the stories women narrated to them. This reliance on repetitive patterns was embedded in what the lawyers had ‘heard’ in past instances of victimhood. The narrative control and consistency or the lack of it was a technique they employed as a filter to identify ‘true’ cases. Their skill as lawyers was to recognise any inconsistencies in the narratives. Such instances that lawyers referred to in conversations with me were often the same: the ‘mismatch of dates’ in various tellings of the story, the ‘changing’ of the story, and forgetting or a lack of consistency between various facts. The mismatch between certain facts or contradictory facts similarly goes back to evidentiary rules, where facts that contradict each other can be challenged in court. Halдар argues that oral and visual proof have to appeal to sight.<sup>273</sup> He writes that in order to persuade, a lawyer has to “open the conceptual eyes of his audience”, which is primarily a matter of clarity and lucidity. Does then coherence and consistency refer to the sharpness and lucidity that

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<sup>273</sup> The precedence of the visual even gains prominence in cases of music plagiarism when the court leans towards a written script of the melody or tune rather than on how the melodies may sound to a layperson’s ears. For more, see Michael Mopas and Amelia Curran, “Seeing the Similarities in Songs: Music Plagiarism, Forensic Musicology and the Translation of Sound in the Courtroom,” in *Sensing Law*, ed. Hamilton et al., (Taylor & Francis, 2016), 73-90.

is associated with an image? The narrative even though heard as opposed to seen, is supposed to open the eyes of the court, to reveal the truth underneath the careful crafting of the lawyer.

Consistency and coherence is considered a way of determining truthfulness. This is the case when lawyers narrow their gaze to a piece of evidence in their professional interactions or a case they have worked on. It is also the case when they include stories of cases that have circulated in the court corridors among their peers. These stories were precedents they came to rely on in their arguments to reinforce their beliefs that they were right. Landmark cases that lawyers rely on to strengthen their case also reinforce the same 'patterns'.<sup>274</sup> This relying on precedents by lawyers stands contrary to 'having seen with my own eyes'. The precedents are not limited to what lawyers 'see with their own eyes', but what is made evident to them by others. They almost serve as an eyewitness to what they see and how they know – an objective reiteration of what they have seen without the bias of subjectivity. The narratives women tell and the facts that are constituted, thus have to appeal to this coherence and consistency, even when they are 'factually' incorrect.

### **"Facts are facts"**

In law, not all facts are relevant. Lawyers often determine what facts are relevant or not. Facts that may appear critical to a litigant might not be given in the legal submission. Under Section 7 of the Indian Evidence Act, if a fact is an occasion, cause, or effect of the facts at issue, it is relevant irrespective of the timing of when the said fact took place. Thus, the question of what facts are relevant is dependent on what they add to the case or what the facts at issue are. Lawyers defined a fact as relevant depending on whether an event or a fact is of 'value'. In courts, 'value' as a term is used to measure the relevancy of facts presented in court, it is only on the basis of their relevancy that facts are admissible in court. Facts that are valuable are facts that make

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<sup>274</sup> Under the Constitution of India, Article 141, it is expressly stated that the decision of the Supreme Court is binding on all subordinate courts in India. Likewise, the decision of High Courts is binding on lower courts within their jurisdiction. In accordance with the rule of *stare decisis*, which means letting the decision stand, similar cases should be decided in a similar fashion. In case of a precedent, where a higher court has previously decided on a question of law or where the facts or issues of the case are similar, the lower court should follow the precedent.

something visible to the court, and that draw the court's attention to disputed facts and shed light on them. In short, 'value' tells us what is important to law and how law hears when adjudicating cases. Does, for example, the piece of information provide insight concerning a contested fact or issue? In the case of women litigants, the facts that they may want to present in court or include in their narratives may not always be relevant to the case at hand.

Facts, I would argue, are constructed to privilege a particular sense. Lawyers rely on the facts of a case to frame arguments for or against. Indisputably, which facts are highlighted is essential to achieving success in courts. The oft-repeated refrain of lawyers, "it depends on the facts of a case", illustrates how critical facts are to the fate of a case. It is after all, the establishment of a previously disputed fact that constitutes proof in a case. In legal proceedings, certain facts are made more visible, just as other facts are left unsaid. Legal facts differ from facts in the scientific sense, that is, as Bruno Latour writes, they are essentially contestable in adversarial proceedings.<sup>275</sup> Taking off from the weight facts carry, and the irrefutability of the written record, the vignette below illustrates how facts are created and the written record reified in legal proceedings. Women in cross-examinations have to faithfully recall not merely the facts they know, but the narratives of their account submitted in court, as these narratives act as evidentiary objects that are translated from the aural to what the court can see in a file.

In Chapter Two, I introduced Hina, a lawyer I followed for the period of my fieldwork. As mentioned there, one evening after court I arrived at Hina's office to witness how Zarna was being prepared for her cross-examination that was to take place on the following day.<sup>276</sup> Zarna, a 26-year-old Muslim woman had filed a domestic violence case two and a half years ago. After more than two years of filing the case, a date for her cross-examination was given by the court. I had met Zarna the previous day and interviewed her in the court precinct about her case. Her uncle, who accompanied her to all her court hearings, stood apart as we talked. Zarna moved out of her mother's home into a rented accommodation after she received an interim monetary order.

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<sup>275</sup> For more, see Bruno Latour, "Scientific Objects and Legal Objectivity," *Law, Anthropology, and the Constitution of the Social: Making Persons and Things*, 2004, 73-114.

<sup>276</sup> *Field Notes from September, 2014*.

Her mother and brothers were not supporting her decision to go to court. At the end of the interview, she suggested that I should come and witness her preparation for cross-examination on the next day at Hina's office. That evening Sameera, another of Hina's clients, also happened to be in her office, and Hina directed me to speak to her because she represented in many ways the 'perfect victim'. Sameera had suffered even more violence than Zarna, as her hand had been burnt. As I sat outside speaking to Sameera, who showed me her burnt hand and described the nature of violence she had endured in her two-year marriage, Zarna studied her files in great detail, making notes, remembering dates and rereading sections and circling what she required a clarification on.

"You have to remember the dates. What is written in the paper he will ask that in a convoluted way. In what paragraph you have said that, he will ask that," Manju, a junior lawyer who worked with Hina, warned Zarna. Zarna nodded. "You can ask me questions now," she said. "I will ask you questions from anywhere. You have to keep in mind what you've said here." I was told it was important for Zarna to remember dates and what she had stated in her application. "This is where the opposite side lawyer will accuse her of fabricating if there is any mismatch," Manju explained to me. As the rehearsal for her cross-examination began, Manju sat opposite Zarna with Zarna's file open before her and unleashed a volley of questions: what is your full name; what is your year of birth; what are your educational qualifications; which year did you get married; where did you live before your marriage; and where did you live after you got married? Shortly afterwards, the questions became more specific about the problems in Zarna's marriage. Nearly the entire exchange between Zarna and Manju was in Hindi, since that was Zarna's preferred language.

**Manju (*lawyer*):** Upto when was your marriage normal?

**Zarna:** Only till the first night

**Manju (*lawyer*):** You're lying

**Zarna (*Looking clearly confused and with raised eyebrows*):** Why?

**Manju (*lawyer*):** I am not saying this but the lawyer will. In paragraph 15 you have said in the application that it was normal for one week.



Say the same thing. Put the stress on the question he is asking not what paragraph he is referring to.

Zarna: This is the advocate's (*the previous lawyer's*) mistake.

Manju (*in English*): Facts are facts. We can bring additional matter on record. But, total facts you cannot deny, because otherwise you are denying what you said on oath.

The fact however was not a fact, as per Zarna. The 'facts' the lawyer had provided in the application were constructed either for their believability, or they were mistakes on the part of the lawyer previously in charge of Zarna's case. Possibly the fact that the marriage was normal for a week came across as a more believable 'fact' to Zarna's former lawyer in contrast to 'one night'. Since this 'fact' was recorded by Zarna's previous lawyer, there was no way to verify whether it was wrongly recorded. Zarna's contesting of the written word was met with disapproval by her current lawyer. Her oral recitation of facts had failed to faithfully shadow the documented narrative in the legal file. The evidentiary protocol of consistency in narratives followed in courtrooms is also demonstrated in legal testimony under the law. Any transgression between the oral testimony and written submissions in courts are pointed out by the lawyer conducting the cross-examination as a proof of lies. The file or the written record play an instrumental role in the creation of 'truth'. The written record becomes incontrovertible evidence about what has happened.<sup>277</sup> Files function like 'recording devices', Vismann argues<sup>278</sup> since they make facts what they are, almost akin to a photograph; the legal files of the case are seen as bereft of any outside influence. Suresh has similarly argued that

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<sup>277</sup> Halder, writes that with print, writing became the 'eye of speech'. Unlike speech, the objective of vision or the image is to open the eye in a persuasive way. The manner in which official records are differentiated from mere copies through insignias, such as a seal of the court or state, an affidavit or a document recorded on officially stamped paper, further affirms the authenticity of the document and places value on both its 'truthfulness' and its importance in relation to mere copies of it. For more, see K. Drybread, "Documents of Indiscipline and Indifference: The Violence of Bureaucracy in a Brazilian Juvenile Prison," *American Ethnologist* 43, no. 3 (2016): 411-423. Halder, "The Return of the Evidencer's Eye: Rhetoric and the Visual Technologies of Proof," 94-95.

<sup>278</sup> Vismann and Winthrop-Young, *Files*, xii.

if it is in the file, it is the truth; if it is not, then it did not happen.<sup>279</sup> Likewise, in the case of Zarna, her disputing that the marriage was ‘normal’ for only one night, as opposed to what was claimed in the file, was denied, not because it was not true but because it was narratively more believable that the marriage was ‘normal’ for a week, as opposed to just one night. Narrative believability, Amsterdam and Bruner argue, is more critical than ‘truth’ in law. When law seeks coherence it seeks coherence not merely in oral and written narratives, but also in what Anthony Good refers to as internal and external credibility, that is, claims have to resonate with what is considered believable and what fits the story.<sup>280</sup> Zarna’s lawyer reiterated that she needed to remember three points, the dowry, loneliness, and verbal abuse, as these wrongs were critical for her case to stand up in court and be constituted as domestic violence within the ambit of the law.

Narratives thus function as recording devices that demonstrate the wrong done in an adversarial proceeding. They embed coherence and consistency in events where none exist. Brooks argues that in doing so they neglect and falsify the ‘real’. In Zarna’s case, her protestation of a constructed fact takes precedence in the legal narrative and is accounted true, as opposed to what happened in reality. This denial of her narrative in order to ‘fit the story’ in accordance with what the law demands tells a narrative that is different from what Zarna wanted the court to hear. We see this cleaning-up both in how courtroom talk is translated, and how stories litigants tell are expunged from law. How stories are scripted and what came ‘after’ or ‘before’ is important to legal outcomes, and the story is told and retold at many stages and in each retelling their narrative, structure and goals change. This is in contrast to how stories are actually told. We see this imprint of the law and its affinity to chrono-temporal precision in what events should follow what in how women narrate stories.

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<sup>279</sup> Suresh, “The File as Hypertext.”

<sup>280</sup> Anthony Good writes that in asylum cases, the internal credibility of coherence in an applicant’s own claims has to resonate and meet with the external ‘generally known facts of a country of origin’ that the asylum seeker belongs to. For more, see Good, “The Taking and Making Of Asylum Claims: Credibility Assessments In the British Asylum Courts,” [DRAFT: PLEASE DO NOT CIRCULATE’, <http://www.thesis.xlibx.info/th-political/4744884-1-the-taking-and-making-asylum-claims-credibility-assessments-the.php>.

## Narratively 'realistic'

Let us take the instance of Swagata, who had filed a case under the Domestic Violence Act. I had spoken to Swagata a couple of times and we had rescheduled our meeting twice. Sunday was a good day, we both agreed, since neither of us had to be in court.<sup>281</sup> Nidhi and her colleague had recommend I meet Swagata for the purpose of my research, since her case was particularly interesting. As planned, we met in her office-cum-shop where she sold accessories for physically disabled persons – an idea she had after her husband became bed-ridden. We seated ourselves in her small office, she pulled the door shut, so that none of the other office boys could hear us. As I explained my work to her, she nodded in agreement about how judge-centric judgements reveal little about what takes place in courts. “You have to talk to litigants,” she conceded. A soft-spoken woman, she had previously worked as a school teacher. Her current work was managing the shop and a courier service to support herself, her daughter and her husband. Like most women litigants, she started her story with her marriage and the circumstances in which it took place. She was married at 21. “I had lost my parents at an early age. My brother arranged my marriage. In 1993, I had my daughter. The marriage was not good from the start. But after my daughter was born she became my focus.”

Like most women, she left and returned to her husband's home many times. Brushing her hands mid-air, she added, “you know the usual story of abuse and problems with in-laws and them being very money-centric. I had grown up in Calcutta. The move to Bombay was a culture shock. I grew up in a conservative household. I wasn't like that,” she added pointing to herself. “I was meek, soft-spoken, wanting to please. I was scared to express myself. I didn't work because I wasn't allowed to work. Back then, men wanted women who were presentable, yet domestic. Someone they were not ashamed of. Beating didn't happen much so I went back with my daughter. He agreed to let me teach in a school. So, I started teaching. I was teaching in an English school close by and ... .” The sentence trailed off. Sipping on her bottle of water, she added, “I'll just give you a realistic story. My husband's business was doing well but then he lost a lot of money in the share market. The financial situation started going bad. Before I left he was drinking and smoking cigarettes every day. I don't hold that against him. I also drink but don't drink if you can't hold it. My

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<sup>281</sup> I continue Swagata's story in Chapter Five.

daughter does not have any affection for him. In 2009, he had a brain haemorrhage. His parents moved to Bombay and bought a flat next to me. They did not like me or my daughter. They were disappointed because I had a girl. They used to bitch about me. Ah, you must have heard similar stories before,” she said breaking away from the story for a moment.”

Then she continued to narrate the landmarks of her case, events that led to where she is now, punctuated by what she thought would be of interest to me. “The trouble started in the meantime and my husband had an operation. He had this property,” she says pointing to the desk. “It was a beauty parlour and then a courier service. I was not part of the business or insurance policies. I was like a mouse,” she hunched her face down to show me. “I was taking anxiety pills. I’m sorry maybe this is not helpful for you.” I protested and requested her to continue. This was not the first time that she had apologised. Every now and then, she apologised for flooding me with what she thought might be unnecessary details and cut herself short: “It is not relevant for your research,” or “Ah, you must have heard similar stories before.” Her idea of a ‘realistic story’ I realised was trimming the details that were considered superfluous in court. Her time in court and with lawyers who had taught her what facts could be constituted as ‘legally relevant’, meant that she had learnt to distil facts that might be considered relevant. Despite my protestations that I was keen on hearing everything, she would often stop mid-way into a sentence, then go back to the ‘facts’, such as how she met her husband; the case chronology and travel in and out of courts; the number of failed mediations; and how the case now stood. She had expunged events from her life based on what was ‘relevant’ to the case, and assumed what I wanted to ‘hear’.

Thus, in her story-telling, she was reflexively editing and cutting out parts that she had learnt were ‘less valuable’ or had failed to elicit a positive response in her previous telling, such as how well she was doing in her teaching job or how she was taking anxiety pills. In her narrative retelling she had internalised the existing politics of power in courts, where she as a narrator was in a diminished position in comparison to other actors like magistrates and lawyers. In the descriptions she gave of herself, she had come to resemble the victim in law. The term ‘aggrieved person’ is the juridical identity a woman assumes when filing a case under the Domestic Violence Act. The law, however, does not provide a definition of what ‘aggrieved’ means. The dictionary meaning of aggrieved is someone who is anguished or hurt at being treated unfairly. In filing a case under the Domestic Violence Act, there is an acceptance of the subject position of being aggrieved.

Women are interpellated, and in this process women come to inhabit the position of the aggrieved.<sup>282</sup>

## Conclusion

In this chapter I have shown how ‘legal sensing’ is closely tied to what narratives are believable in courts, yet the ‘legal sensing’ lawyers refer to in their ability to recognise what facts are recognisable as truth is located in a particular aesthetics of sense that is implicated in a particular sensing body, and embedded in a particular culture and what a particular culture conceives of as ‘real’, ‘truthful’ and what matters.<sup>283</sup> Lawyers come to acquire the knowledge in courtroom practice, specifically in cases under the Domestic Violence Act. In the case of identifying ‘real victims’ from dubious claims of domestic violence, I argue one has to consider the discourse around the misuse of the Domestic Violence Act and in relation to women-centric laws in general. In Chapter Two I argued that women constantly have to prove that they are ‘perfect victims’ in order to attain relief under the Act, and this is correlated to the discourse and constant doubt about misuse of the Act. The ‘legal sensing’ of true claims from false ones that lawyers referred to is thus also a matter of assessing whether the women claiming domestic violence and their narratives of violence are in consonance with the definition of the ‘aggrieved person’ defined under the Act. The legal categories of violence recognised by the Act implicate ‘legal sensing’, as definitions of what qualifies as domestic violence favours different senses. The physical violence demands an ocular testimony of something that is visible to the eye. Violence relating to the verbal and emotional are not visible yet are made visible through narratives and testimonies of the violence suffered and any medical reports that may be available. Sexual violence, however, is more difficult to prove. As the female victims are generally the sole witnesses to the violence suffered, the role these women are expected to occupy as witnesses to their own violence, and as victims, places them in a conflicted position, especially when evidence is evaluated.<sup>284</sup>

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<sup>282</sup> Althusser, *Essays on Ideology*.

<sup>283</sup> Amsterdam and Bruner.

<sup>284</sup> In Sameena Mulla’s study on sexual assault victims, Mulla writes about the contradictory positions that a sexual assault victim is forced to occupy, where she is the key witness to her assault and at the same time is expected to perform the role of a wounded subject. It is here, Mulla writes, that the ‘forensic sensorium’ of the nurse comes into play. Here she makes the invisible visible through her eyes and turns what happened into an

The lawyerly ‘sniff’ and the attuning of one’s sense that Hina referred to was much like that, an enviable professional attribute that lawyers solely acquire through legal training. Lawyers even before the reliance on photographic evidence were aware of how visibility is persuasive in law. The emphasis on narrative, however, throws open the question of the other senses, and raises the issue that narrative coherence can disrupt the centrality of sight or seeing in law. Narratives amplify what needs to be heard. They are critical in how they make audible and translate the subjective experience of violence and victimhood into legal categories. Is then the legal normativity lawyers seek in stories of violence one kind of sense? In identifying truth claims the lawyers relied on their gut sense of what stories ring true. When Hina directed my attention to a woman who had been burnt and who her other colleague referred to as the ‘perfect victim’, what sense determined this? Was it the easily visible evidentiary exhibit of burn marks on her hand that made Sameera a believable victim? Hina was clearly convinced by the visibility of the evidence of violence, making it easier to prove than other forms of violence that may elude our senses. The categorising of physical violence that bears evidence on the body as violence that is out of the ordinary, and therefore worthy of attending to, normalises other kinds of violence. The High Court judge who articulated how she dismissed and criticised what she called ‘one-slap’ cases, where a woman knocks at the door of the court because of minor violence is an indication of how certain acts of violence are seen as routine, and therefore not worth reporting. It is this kind of violence that is so commonplace and unremarkable that it escapes us, as it is not the kind of violence that deserves attention. My interest in this chapter is not so much to interrogate the notion of evidence, but to closely look at the processes and perceptual field we use in how evidence is assessed, and how access is determined by the way in which narratives are framed. Of course, the interrogation of how evidence is assessed opens up the question of evidence itself, and what counts as evidence.

From the perspective of domestic violence cases, how narratives of domestic violence are shaped and situated are contingent on the female victim-subject. The narratives have to be categorised in various categories of violence stipulated by law, such as physical,

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evidentiary artefact that is legally acceptable. For more, see Mulla, *Sensing Sexual Assault*.

verbal, emotional and social violence, and economic violence.<sup>285</sup> The stories of violence women narrate have to conform to the legal categories, but also have to conform to normative experiences of how and what kind of violence women suffer, how victims of domestic violence should look and behave, and what kind of violence and degree of violence necessitates approaching a court. The question of how much violence is enough to qualify as a true case of domestic violence persistently reemerges in discussions on violence. Evidence of 'burn marks' or 'bodily injury' that appeal to the ocular and confirm the authenticity of the claims. Yet, what we see and how we see is dependent on what is made visible. When lawyers I met were referring to what they saw and what they know it was not limited to what they saw with their own eyes, but what other lawyers made them see through stories of cases they handled or judgements they read. The authority of lawyerly evidence derives not merely from 'their own seeing', but from what others see too. In the cases I write about in particular, what lawyers see is contingent on what law lends its attention to. This is critical to how lawyers 'sense' truth claims and what they look for in stories of domestic violence. Evidence is what lawyers make visible and much of this is done with help of how narratives are constructed, and facts are framed.<sup>286</sup>

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<sup>285</sup> As indicated previously, economic violence under the Domestic Violence Act is intended to address situations where women who are financially dependent on the partner or perpetrator of violence, are not left destitute after filing the case, or are not deterred by the consequence that it may leave them homeless. For definitions of domestic violence and the various civil reliefs available under the law, see Chapter Two.

<sup>286</sup> Facts in law and facts in a scientific sense have been distinguished by scholars. Facts in law, as Neal Feigenson argues, are facts based on which legal arguments and rulings operate. More often than not, these facts in law are often what has been perceived by the person and only known to him. For more, see Feigenson, "Experiencing Other Minds in the Courtroom."

## Chapter Five

### Being ‘Stuck’: Delay and Waiting in Court

Waiting is “a particular experience of time”, to borrow the words of sociologist Javier Auyero. Writing on how poor people wait in a welfare office in Buenos Aires, Auyero turned his attention to the act of ‘waiting’ itself.<sup>287</sup> Waiting, he writes, is a specific experience of time and corresponds to power relations, as the less powerful are compelled to wait. In this chapter I examine judicial delay through everyday waiting experiences of women litigants, and how this delay is related to access. The female litigants I closely followed in my study discussed their waiting in courts at length. They described it both spatially and temporally as a place-time where ‘nothing happens’, but also as being stuck situationally considering their cases as per them do not move and the fact that the relief they sought remains inaccessible. The waiting in which ‘nothing happens’ to their cases, relates to the feeling of being stuck and what Ghassan Hage has described as ‘stuckedness’.<sup>288</sup> Hage defines ‘stuckedness’ as “a situation where a person suffers from both the absence of choices or alternatives to the situation one is in and an inability to grab such alternatives even if they present themselves.” Hage, specifically, describes the feeling of ‘stuckedness’ as a feeling of going nowhere in life, especially when the desire to go somewhere in life is realised through physical mobility.

From the perspective of the women litigants, the mobility and the changes in the lives of women in comparison to their cases that go nowhere, results in a feeling of being ‘stuck’. The women are stuck in a situation that they seek to escape from. This includes being stuck in violent relationships and being stuck in courts when their cases do not move forward. The description of ‘nothing happens’ in courts is thus also an expression of hopelessness, and an articulation of the arbitrary power that courts exercise in their lives. Despite this sense of hopelessness and lack of control, the women in my study frequently

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<sup>287</sup> For more, see Javier Auyero, “Patients of the State: An Ethnographic Account of Poor People’s Waiting,” *Latin American Research Review* 46, no. 1 (2011): 5–29.

<sup>288</sup> For more, see *Waiting*, edited by Ghassan Hage, (Melbourne University Publishing, 2009), 100.



expressed how they were transformed in the process of seeking relief in court, and spoke of the freedom and independence they had acquired after escaping violent relationships and coming before the law. In contrast, as women escaped and gained control over their lives by leaving violent relationships, coming before the law involved losing control again as the wait and judicial delay in courts meant being stuck again.

Examining waiting and judicial delays in courts, I argue, is critical since the delays and waiting have a bearing on women's lives, and the 'wait' demonstrates the power courts exercise on litigants' lives. Waiting, Pierre Bourdieu argues, reveals power in social relationships. "The all-powerful is he who does not wait but who makes others wait," he writes in *Pascalian Meditations*.<sup>289</sup> Real power, he says, is when you can deny people the ability or capacity to predict. How we wait and who waits are governed by whose time matters and whose doesn't. The uncertainty that involves waiting, like delaying, changing dates or rescheduling, reordering the nature of things, confusing and making it unpredictable by keeping one on 'tenterhooks' is the privilege of the powerful. The less privileged learn to wait. It is this denying the capacity to predict or to know how long the wait is that Hage described as the 'stuckedness' of waiting.<sup>290</sup> Anxious powerless waiting, where 'patience' is key to waiting, is what Auyero's ethnographic study in the waiting area at the welfare office in Buenos Aires exposes. Auyero describes the poor subjects as 'patients of the state' who have no choice but to wait.<sup>291</sup> The sense of arbitrariness, anxiety, and loss of control is what both Auyero and Hage discuss in their work when they write about waiting. Waiting, Auyero points out, is stratified. Its experience is not uniform since there are variations in waiting time and delay.<sup>292</sup> Similar to Bourdieu, in *Queuing and Waiting*, Barry Schwartz observes how queues reveal the social positions of individuals depending on the extent of their

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<sup>289</sup> Pierre Bourdieu, *Pascalian Meditations* (Stanford University Press, 2000), 228.

<sup>290</sup> Hage and Hage.

<sup>291</sup> Javier Auyero, *Patients of the State: The Politics of Waiting in Argentina* (Duke University Press, 2012).

<sup>292</sup> Auyero, 27-28.

waiting, who waits and who is waited for.<sup>293</sup> The more powerful the person is, the more access to him is regulated, Schwartz writes. In similar terms, the longer our wait, the more it reveals the lesser value of our time and the higher value of who we are waiting for. Waiting in court for a hearing and the power the court exercises over litigants reveals the hierarchal nature of accessing law itself, and what access means in everyday life.

This chapter thus catalogues the waiting experiences of women litigants in courts as they attempt to gain access to the law and the reliefs promised by the Domestic Violence Act. In a cruel parody, women find themselves again stuck and again losing control, except this time to the demands of the law. The waiting experiences reveal the power dynamics and the hierarchal nature of accessing courts, especially with respect to lower courts. By drawing on an ethnographic examination of cases and how litigants grapple with judicial delay, I seek to reveal the effects of temporal delay on lives, and how the parameters used by litigants (in this case female litigants) to measure delay differs from judicial assessment of delay. I particularly underscore this disparity between the judicial assessment of delay and how litigants measure delay by focusing on differing conceptions of time.

I thus analyse multiple temporalities, and I argue that how women perceive temporal delay and waiting in courts brings to fore the stark contrast between women's perception of what is 'reasonable time' to resolve cases and that of law's definition of what is 'reasonable time'. The legal notion of 'reasonable time' differs from how litigants experience 'reasonable time,' and how courts measure time.<sup>294</sup> Reasonable time is a central tenet of the right to a fair trial, and of the perception of justice. The notion of what is reasonable time differs in civil and criminal proceedings. Instead, what is reasonable time is contingent on the nature of the proceeding and the facts of a case. By presenting the different chronotopes, and relationally examining the different spatio-temporalities, I argue that the perception of 'nothing happens' is enhanced. Contrary to the experience of 'nothing happens', something does happen in courts. For women litigants, the

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<sup>293</sup> For more, see Barry Schwartz, *Queuing and Waiting: Studies in the Social Organization of Access and Delay* (University of Chicago Press, 1975).

<sup>294</sup> By case-time, I refer to the time taken for a case to finish from the date of its application.

time pertaining to their cases feels static since their hopes are hinged on the closure of cases and being granted reliefs.

I draw on Mikhail Bakhtin's literary device 'chronotope' to analyse different chronotopes and how space-time are connected, and the effects of time on space, and the effects of space on time in turn. In his monograph *The Dialogic Imagination: Four Essays*, Bakhtin specifically looked at how time is spatialised in different literary genres, how they coalesce, and how intrinsic they are to genre and plot development and progressions.<sup>295</sup> The 'chronotope', in particular, aids in understanding how the relationality of time affects women's experiences of waiting and how they measure time. Bakhtin gives the example of Greek romance as a genre where time is erased as heroes traverse distances from Greece to Egypt without ageing, transforming, or encountering any change. The final reunion of star-crossed lovers, he writes, erases time twice, as lovers do not age despite the long and arduous journeys undertaken, and the world remains static and unchanged in the time they were away. This, he points out, contrasts with modern-day novels, where such shifts in space-time would have had altering consequences for the plot and its protagonists.

From the perspective of analysing the feeling of 'nothing happens', I find the absence of 'suddenlys' as plot development indicators and erasure of time in Greek novels particularly useful. I elaborate on this in further detail below. How time progresses or feels static is spatially materialised and space in turn effects how time is perceived, especially in courtrooms where time does not move when women wait, in comparison to the time that moves at a breathless pace in Mumbai. It is the nature of 'waiting' in court itself, which is a passive act that a litigant described as "I just go and sit there the whole day" is an experience that goes beyond mere spatio-temporality to a loss of control over where and how long you sit, when you speak or when you visit the court, in contrast to the movement outside the court where a lot happens in a short span.

In this chapter, I first foreground the debates on access to justice, and scholarly and policy conversations on 'judicial delay and backlog'. Then through an ethnographic vignette of a regular everyday

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<sup>295</sup> M. M. Bakhtin, *The Dialogic Imagination: Four Essays*, ed. Michael Holquist, trans. Caryl Emerson, Reprint edition (Austin, Tex.: University of Texas Press, 1982).

wait in court, I provide an overview of the nature of waiting that women endure in court, and the unpredictability and uncertainty they experience about how the day will unfold. From there on, I present the multiple temporalities that women encounter both within courts and outside of courts – legal time, bureaucratic time and court time on an everyday basis. The first temporality women encounter is when they decide to use the Domestic Violence Act, which stipulates under Section 12 (5) of the Act that the case should be completed, and the relief should be granted within sixty days from the date of its application. The section states that: “The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.” The cases, however, fail to close within the said time-frame of sixty days. In addition, to the time-frame stipulated in the Act, women encounter what I term as the ‘bureaucratic time’ in which courts function. Both bureaucratic procedures that involve the administrative functioning of the court, and trial court procedures have their own functioning temporalities that transcend the everyday categories of measuring time.

In the last section, I argue that women measure time in the legal trajectory of the case that appears ‘static’, and contrast the time taken by their cases with the progressions in their lives. The transformations women refer to when they articulate the changes in their lives and in themselves accentuate both the stillness of court time and their cases, but also in turn speeds up and underscores the changes in their own lives. The women I interviewed, and their sense of time, is governed by changes, transformations and ‘progressions’ and ‘movement’ in their own lives. The women litigants I met often described how their engagements with the law had transformed them or how their children in this ‘waiting time’ had crossed certain landmarks of growing up, like finishing schooling or entering graduate school. The foremost change in their lives is marked by how they have escaped a troubled violent relationship, thus gaining freedom and independence. In contrast, while much in their lives has moved forward and changed and progressed in linear fashion, their cases in courts appeared ‘stuck’. Consequently, the act of filing a case in court had failed in its movement from present to future time. The ‘stuckedness’ experienced in waiting reveals the inequality and lack of control women encounter in waiting in courts, in contrast to the freedom and independence they gain after exiting violent relationships. I conclude with the suggestion that while women articulate their disappointments with the law and the waiting it involves, we see that time is an efficient negotiator. Litigation, as Tara,

one of my lawyer informants I followed observed, is who ‘breaks first’. I had reached out to Tara after her name was recommended by many lawyers, since she had many Domestic Violence cases, and argued in the lower court and regularly in the High Court. I had spent many hours in her office located in her home, as she practised as a sole practitioner without anyone assisting her in cases. She was considered successful by other lawyers, since she attended to ‘high-profile’ clients who came with a certain financial privilege and she practised regularly in the High Court. In my many meetings with her, she reasoned that this breaking of parties is an effect of time, and the effect and consequence of temporal delay on litigants’ lives. In most cases, she argued, settlements take place out of frustration with making court visits, and being ‘stuck’ in court. Time, then is crucial to carry the story forward even in cases that appear ‘stuck’ and where ‘nothing happens’.

### **Judicial delay and waiting**

As I have argued, legal policy reforms so far have focused on the reasons and circumstances resulting in judicial backlog and arrears.<sup>296</sup> There has been no policy attention on the experience and impact of waiting and the effect of judicial delay on litigants’ lives, and what that has to do with ‘access to justice’. Legal scholars, like Marc Galanter in his seminal article of the same name, have observed how the “haves come out ahead”.<sup>297</sup> Galanter writes how the ‘haves’ stand a better

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<sup>296</sup> The 245<sup>th</sup> Law Commission Report, “Arrears and Backlog: Creating Additional Judicial (Wo)manpower,” focused on elimination of delays and speedy justice. In consonance with past reports and suggestions concerning judicial backlogs, the report focused on the need to strengthen judiciary numbers in the lower courts, and the need for established parameters to assess judicial competency to be able to recommend judicial reform. The current lack of data on the competency of judiciary and the nature of pending cases were highlighted as problem areas. For more, see Law Commission of India Report: “Arrears and Backlog: Creating Additional Judicial (Wo)manpower,” July 2014.

<sup>297</sup> The recent survey of civil cases that were pending for more than five years in court revealed that powerful parties have the ability to manipulate the system in their favour, and obtain early relief when they approach the courts, and delay the matter when they are sued. The disempowered population (in this instance educational qualifications being the primary criteria of assessment) who approach the court are more likely to face delays, observed the report. For more, see “The Access to Justice Survey: Decoding Delays. Part I: Civil Cases,” *Daksh* (blog), 15 October 2016, <http://dakshindia.org/access-justice-survey-decoding-delays-part-civil-cases/>.

chance at litigation owing to the legal representation they can afford, as well as having the resources to challenge and appeal against the decisions of the lower courts. This, he observes, greatly impacts the chances of success in courts based on whether they are “one-shotters” or “repeat players”.<sup>298</sup>

Moreover, as Krishnan observes, policy and scholarly attention on judicial delay in India has been on the upper tier of the judiciary, that is, the State High Courts and the Supreme Court of India.<sup>299</sup> The lower courts, which include the district courts, sub-district courts and quasi-dispute resolution bodies, have received scant scholarly attention. The lawyers and judges who practice in lower-tier courts, and the litigants who frequent it form the vast majority in courts, and these litigants may or may not have the financial ability to proceed to higher courts.<sup>300</sup> As argued by Krishnan, the factors and constraints that litigants face in order to enforce their rights in lower courts has rarely been evaluated. The focus on lack of infrastructure has similarly focused on the scarcity of judges, as opposed to the quality of judges and lawyers practising in lower tier courts, the lack of basic sanitation and toilets in lower courts, and the absence of any waiting spaces (benches or waiting rooms) for litigants who wait long hours in courts. These factors are intrinsic to enabling access to law and to how litigants come to law.

Krishnan remarks that the question of free legal aid after the 1975 Emergency in India mainly focussed on public interest lawyering.<sup>301</sup> This was echoed by various practitioners who lauded the

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<sup>298</sup> For more see, Marc Galanter, “Why the ‘Haves’ Come out Ahead: Speculations on the Limits of Legal Change,” *Law & Society Review* 9, no. 1 (1974): 95–160: 95.

<sup>299</sup> Jayanth K. Krishnan et al., “Grappling at the Grassroots: Access to Justice in India’s Lower Tier,” *Harvard Human Rights Journal* 27 (2014), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2297152](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2297152).

<sup>300</sup> Krishnan et al.

<sup>301</sup> The two-year Emergency Rule in 1975 led to a concerted effort to enforce Part IV Article 39A of the Constitution, namely a Directive Principle of State Policy that stipulates that equal opportunity and free legal aid should be available to all, irrespective of economic or other disabilities. Efforts to enforce the rights of the disempowered segment were made by adopting public-interest litigation (PIL), where judges took proactive steps to enforce rights by responding to grievances that came to their attention through third parties, letters, or news reports. This initiative though, as Krishnan points

public interest litigation to empower the less privileged in higher courts, and the role that the Supreme Court of India played.<sup>302</sup> In contrast, in the lower-tier courts the quality of lawyers, judiciary and the general infrastructure remain poor. Litigants require not merely the financial capacity to engage good quality lawyers in lower-tier courts but, as Galanter has warned, they also benefit from familiarity with local officials, local rules and local modes of custom. This chapter shifts the debate from the discussion on pendency of cases to closely examining waiting to reveal what bearing judicial delays have on litigants' lives, how litigants combat waiting and how the definition of 'reasonable time' is contested.

### Experiencing Waiting in Courts

The women litigants I interviewed and whose cases I closely followed in my study spoke at length about their waiting in courts. As previously mentioned, they described their waiting as 'empty time' where 'nothing happens', since their cases did not move forward. In this section, I will provide an ethnographic vignette of the experience of waiting in court. This waiting that I describe below includes an observation of how litigants wait; it also offers a glimpse of the wait that I experienced when I followed cases in court. The wait women describe starts from the date of filing an application under the Domestic Violence Act and ends with the closure of the case. Women mark and calculate the waiting time as the time between the two temporal points of filing the case and the closure of the case, or the final relief being granted.

In this chapter, I am going to continue the story of Farzana. As mentioned in Chapter 3, Farzana had three dates assigned for her cross-examination. On the date assigned for her cross-examination, I

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out, was limited to the higher courts. For more on the evolution of PIL, see Krishnan et al. "Grappling at the Grassroots"; Marc Galanter and Jayanth K. Krishnan, "Bread for the Poor: Access to Justice and the Rights of the Needy in India," *Hastings Law Journal* 55 (2004): 789.

<sup>302</sup> Krishnan et al., "Grappling at the Grassroots"; Rajeev Dhavan, "Law as Struggle: Public Interest Law in India," *Journal of the Indian Law Institute* 36, no. 3 (1994): 302–38. Dhavan, in particular, pointed to how public interest litigation enabled the disempowered to reach courts. P. N. Bhagwati and C. J. Dias, "The Judiciary in India: A Hunger and Thirst for Justice," *NUJS L. Rev.* 5 (2012): 171. Bhagwati and Dias focus on the role of public interest litigation and the Supreme Court in enabling access to justice.

had arrived early to ensure a seat in the front rows of the courtroom.<sup>303</sup> This was the second date assigned for Farzana's cross-examination; on the first date the Magistrate was absent owing to a customary jail visit. I arrived forty minutes early as the traffic was less than usual that day. There were a few lawyers and women with children standing in the court complex. On the ground floor a woman was sweeping the floor while a few people stood near the two lifts. The courtroom where the Magistrate had recently changed was empty, with mostly litigants seated. A lawyer was loudly advising his female client: "Remember all the dates. Just don't ask for money. If I had believed you I would be in a mess." After that, he walked out of the courtroom while his client remained seated inside; he returned a few minutes later and continued pacing inside and outside the courtroom. The sun and the morning traffic horns were both blazing outside. At 10.42 the transcriber arrived. The courtroom was slowly beginning to fill up as lawyers and other litigants trickled in. I sat below a whirring fan on the wooden bench, below the Magistrate's dais. I could see some litigants fanning themselves and talking in hushed tones. As the courtroom began to get full, it became warmer and the air hung still.

The new Magistrate, who was a woman, entered, and everyone rose up from their chairs. I saw Farzana and her two brothers seated at the back behind the lawyers. I hadn't noticed when they entered the courtroom. Farzana was dressed in a black hijab and had a file resting on her lap; she was reading intently. It was an unusually warm day and the noise levels in the courtroom were high. Farzana's lawyer was still not here and her case was listed as number 22 for that day; it was sure to start before lunch. I had seen the other side's lawyer pacing in and out of the courtroom while I sat stuck between two lawyers on a hard-wooden bench. The court clerk started to call out the cases, and out they tumbled – lawyers, clients, and relatives of clients – as the cases rolled out one after another. After months in court, many arguments between parties had begun to sound the same: the squabbling between clients and lawyers over the maintenance amount that remained unpaid, or an absent respondent who rarely made an appearance, an application to pay arrears. Most lawyers took later dates though some had their cases kept back for arguments for later in the day. It was only at noon that Farzana's case came up, and so did Manju, her lawyer.

As the case was called out, Manju sweating in her black vest, nervously requested 'in-camera proceedings' for the cross-examination. The

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<sup>303</sup> *Field Notes, September, 2014.*



respondent's lawyer objected stating that: "She is not a woman in *purdah*."<sup>304</sup>

**Manju (*in Marathi*):** The problem is that she is not comfortable speaking in open court. She is too scared

**Magistrate (*in Marathi*):** Start the cross examination. If I feel the need, I'll take it in-camera.

**Manju (*in Marathi*):** Whatever you say, Madam.

**Respondent's lawyer (Sarab) (*in English*):** As such I have no objection.

**Manju (*in Marathi*):** I had submitted some documents for enhancement of maintenance. You said you would consider it.

**Respondent's lawyer (Sarab) (*mumbles something I could not hear*):**

**Manju (*in Marathi*):** You tell me how 1500 Rs. is enough to live on.

The Magistrate looks impatient but does not respond. The other side's lawyer requests that the cross-examination be pushed back to after lunch.

**Respondent's lawyer (Sarab) (*in English*):** I have a matter in other courtroom, Madam. Can we have the cross-examination after lunch?

The Magistrate finally agreed to have the cross-examination after lunch, since the other side's lawyer had a case in the adjoining courtroom. Farzana was standing behind Manju, and both agreed to return after the lunch break. When we returned after lunch, the court resumed with bail applications. I seated myself in the same place below the Magistrate's table since the proceedings were more audible there, and I saw Farzana from a distance, still intently reading her file. A cross-examination in another case came up and given it was a sensitive matter we were asked to leave the courtroom at 3 pm. We stepped out into the windowless waiting area and chatted while fanning ourselves with loose sheets of paper; Farzana and her brothers stood in a corner. The corridor, which doubled up as a waiting room, was crowded with everyone from the courtroom. The crowds gradually thinned out by 4 pm. At around 4.30 the cleaner woman was back sweeping the floor,

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<sup>304</sup> Almost the entire exchange between the Magistrate and both lawyers took place in three languages: Hindi, Marathi and English.

and we moved from one corner to the next as her broom prodded us. At nearly 4.40 the doors of the courtroom opened, and Manju told me, “Today the cross will not happen – too late now,” clicking her tongue against the roof of her mouth. We stepped in and the Magistrate assigned another date for early the following month (October).

This waiting is characteristic of waiting in court. Typically, litigants wait the entire day for their cases to come up, and most often return home with another date fixed. The waiting and the conditions of waiting, though, have more than temporal consequences; the waiting area outside the courtrooms for instance has no chairs or benches. The lower court lacked a functioning toilet, and on a typical day people outnumbered chairs. In addition to no access to toilets, clean drinking water and subsidised food was not available. In the months of my fieldwork the public toilet was continuously ‘out of repair’. This meant that women and children had no access to toilets in the courts, nor were they permitted to use the lawyers’ and administrative staff’s toilets. For women to have access to toilets, they had to visit restaurants, and either had to pay to use the toilet there or had to purchase food. Women who attend court hearings with children often hang around the courts the whole day, without any opportunity for them or their children to rest. Given that the courtrooms are crowded, most litigants stand for long hours, and courtrooms lack good ventilation and during the summer months are unbearable. This are just some examples of how arduous and uncomfortable the wait for most people is.

The staircase landing, which serves as a waiting area outside the courtrooms, indicates not merely how the less privileged wait for the court to commence, but also how they should wait. Notices on maintaining ‘silence’ or keeping mobile phones on silence or switched off mode are plastered on the faded walls of the courts. Litigants also wait inside the courtrooms. They wait when the time they are allotted is rescheduled without their knowledge or is fixed to suit their lawyers and judges; they wait for their case number that was to come up before lunch but is delayed to the post-lunch session; they wait when judges do not turn up or are transferred, or when cases are reshuffled and transferred to another courtroom without any prior warning. Yet, the only reference the law makes to time is the sixty days given in the Domestic Violence Act; the time by which relief should be granted.

Farzana's cross-examination finally took place on the third date that was assigned by the Magistrate.<sup>305</sup> This was two years after she had filed the case in the court. She had received a small sum of interim maintenance but not as much as what she had sought. Not until the evidence was filed and the cross-examination completed would a final order be passed. It was this waiting with nothing happening that litigants often referred to. As Sameera, one of my female informants, responded to my question on her case status, "Nothing has happened. That's it. I come and sit here the full day" (*Kuch bhi nahi hua hain. Bus pura pura dhin yaha aake baithe raho*). Another described the court as continuing 'violence and torture'. Yet, many continued with their case instead of withdrawing the matter.

### **Analysing Everyday Court Time and Bureaucratic Time**

In this section I focus on waiting in court, and the multiple temporalities at play. The wait in court is a particular experience of time and space. I use Bakhtin's evocative phrase how waiting 'thickens time', and how time in turn affects our experience of space. Bakhtin writes on the dialogic effects of time and space: "Time, as it were, thickens, takes on flesh, becomes artistically visible; likewise, space becomes charged and responsive to the movements of time, plot, and history." The waiting in court therefore is a specific spatio-temporal experience. Scholars writing on time have discussed different conceptions of time, but have mostly focused on time<sup>306</sup> without discussing its effects on space, and vice versa.<sup>307</sup> In this section I focus

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<sup>305</sup> The third date for the cross-examination was after one month. The cross-examination is recorded in Chapter Three.

<sup>306</sup> The writing on time has emphasised the linear conception of time that came with Christianity, and the belief in the time of creation and the eventual advancement towards the Judgement Day. For more, see Carol J. Greenhouse, "Just in Time: Temporality and the Cultural Legitimation of Law," *Yale Law Journal*, 98, no. 8 (June 1989): 1631-1651.

<sup>307</sup> The differing conceptions of time in various cultures has been well studied in anthropology. A single conception of time was used in an industrial unit or a factory or in social institutions, where the linear movement of time was required since different individuals working in collaboration require a single conception of time. The challenge to the conception of singular time thus is not new. Naturally, then, the measurement of time and its experience is not uniform either. See Pitirim A. Sorokin and Robert K. Merton, "Social Time: A Methodological and Functional Analysis," *American Journal of Sociology* 42,

on different conceptions of time. The different conceptions of time become apparent as what qualifies as ‘reasonable time’ in law and for the court as institutions and women differs. I firstly start with the multiple temporalities of court time and bureaucratic time, the objective being to show that something does happen in courts, despite the feeling of stillness and immobility that women describe. Women measure different chronotopic events in their lives, and it is the spatio-temporal experience of waiting when looked at relationally that accentuates the ‘stillness’ of court time. This is not to suggest that legal actions in India are not long, strenuous and laborious, nor do I wish to underplay the wait of those who turn to courts for relief.

The nature of the wait, and where and how women wait colours the experience of waiting. Thus, the spatio-temporality of waiting in courts results in a certain experience of time and waiting. Mariana Valverde’s work on the court as a chronotope is particularly instructive to my analysis here, and the most recent work to understand the court, its temporal markers, and legal speech as chronotopic. Valverde’s work does not, however, discuss waiting.<sup>308</sup> Valverde writes about courts as a chronotope where time pauses between opening and ending times and on business days. According to her, courtrooms are temporally specific where they exist only in official time or when the court is in session.<sup>309</sup> The temporality is not continuous and the judge can stop and restart time. Courts do not exist in a single chronotope, for there are many layers of temporality within courts that continuously shift in the day-to-day court life. For

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no. 5 (1937): 615–29; Michael G. Flaherty, Betina Freidin, and Ruth Sautu, “Variation in the Perceived Passage of Time: A Cross-National Study,” *Social Psychology Quarterly* 68, no. 4 (2005): 400–410; Justin B. Richland, “Sovereign Time, Storied Moments: The Temporalities of Law, Tradition, and Ethnography in Hopi Tribal Court,” *PoLAR Political and Legal Anthropology Review* 31, no. 1 (May 2008): 8–27, <https://doi.org/10.1111/j.1555-2934.2008.00004.x>; Greenhouse, “Just in Time.” In Julius A. Roth’s ethnographic study in tuberculosis hospitals, patients and doctors mark and structure time according to their different criteria. This different conception of time often gives rise to conflict and disappointment. For more, see Julius A. Roth, *Timetables: Structuring the Passage of Time in Hospital Treatment and Other Careers* (Indianapolis: Bobbs-Merrill, 1963).

<sup>308</sup> Mariana Valverde, *Chronotopes of Law: Jurisdiction, Scale and Governance*, 1st edition (Abingdon, Oxon ; New York, NY: Routledge, 2015).

<sup>309</sup> Mariana Valverde, “Hybrid SpaceTimes: Sociolegal Studies in a New Key,” <https://doi.org/n.d.>

instance, informal mediations that take place in the Magistrate's chambers fall outside of official court hours. The mediation that takes place in the Magistrate's chambers often to encourage a settlement between the parties, especially when magistrates perceive a lengthy trial before them, operates outside of court official hours. By removing his legal robe and sitting across from the parties with their respective lawyers, the magistrate steps out of both the temporal and spatial segment of court time. Such mediations are held in the court space, but the informal nature of the conversations, the lack of the magistrate's black robes and the absence of a raised dais present a different spatiotemporal segment. It challenges the idea of a court time as a singular or one chronotope segment. The recording of the conversations and settlements in writing by the magistrate himself achieves the legitimization of law.

Although for analytical purposes I speak of court time as 'singular' time in this chapter, court time is manifold. Firstly, there is court time and bureaucratic time – time in both cases moves in what Bakhtin describes as cyclical everyday time. Time in court thus follows a cyclical rhythm where every day feels the same. The everyday function of courts exist in this daily toil, where cases, arguments and conversations repeat themselves. Every date and 'hearing' is like the previous one or like a case heard before. The relevance of court precedents and reliance by lawyers on landmark judgements is repeated in arguments day-after-day, where cases and the circulating discourse of violence against women is all too common. Both bureaucratic court procedures and trial procedures have their own functioning temporalities that transcend the everyday categories of measuring time. Scholars, especially legal anthropologists, have demonstrated that law exists in the everyday.<sup>310</sup> But, what does the everyday time of the law look like in courts? Despite its eccentricities, incomprehensibility and its 'stuckedness', courts do function in the everyday. Lower courts typically have a six-day week and work from 11 am to 5 pm from Monday to Saturday and have the second and the fourth Saturday off – two crucial days that afford lawyers time to draft cases, meet with clients, and finish off pending matters, and judges time to catch up on their reading. The court staff, however, works beyond the official hours of 5 pm.

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<sup>310</sup> For everyday law, see Sarat and Kearns, *Law in Everyday Life*; Ewick and Silbey, *The Common Place of Law*; Merry, *Getting Justice and Getting Even: Legal Consciousness among Working-Class Americans*.

During my fieldwork in court, the staff was around until about 7 pm and would start its day before the court sat at 11 am. At the end of the day, the listing of cases would have to be ready for the next day, the files for cases that were to come up needed to be arranged, and the court staff would file and document the events of the day. The list of cases would be hung outside the courtrooms, and most often would be inside the courtroom for lawyers to consult at the start of the day. Unlike the higher court, where the listing of cases is computerised, in lower courts the cases for the day were written using both a typewriter and computer. The listing of cases other than those hung up in the courtrooms, were filed in registers for future reference and were available from the registrar's office for anyone to consult. The court clerk sitting beside the magistrate who typically calls out cases, intervenes and assigns dates was a constant in the court even after magistrates were transferred. In my fieldwork conducted in three phases, magistrates changed in at least two courtrooms in a matter of four months; it was the court clerks and the other functionaries of the court office that were the only constant. The clerk would often recognise parties, interact with lawyers on days magistrates were absent, and communicate the courts' available dates informally to lawyers he recognised in the court. In the first few weeks, the court clerk told me to come after noon to hear domestic violence cases. "After noon the real hearing happens. Before that, *saab* (sir) will call matters to be adjourned or kept back." It was a relevant piece of information that saved time.

The court officials I interacted with during my fieldwork were a reassuring presence in the court who provided official information non-officially or off the record. Such information included who was a 'good' judge; which magistrates worked beyond the court's official hours; was the magistrate a no-nonsense type or was he or she having a bad day? The sincerity of judges, their hours of work, the lawyers I should contact or the cases I should follow – the court staff knew it all. Court functionaries often stepped in in matters such as filing applications, evidence and documents, and gave guidance in navigating the bureaucratic maze. As months passed by, the court staff had come to recognise me in court, often introducing me to the workings of a new magistrate who may have come in place of a former one, sharing information of a case that might be of interest to me, or a hearing or argument that might prove useful for my study. In Fuller and Benei's book on the everyday state in modern India, they argue that the faceless bureaucrats in government offices 'actually do have faces', and demonstrate how social relationships can be formed with the lowest *sarkari* officials. Much of the work on the anthropology of

the state has focused on how bureaucratic knowledge serves to navigate and subvert the system, how low-level clerks understand the 'system' and its workings and how the boundaries between the state, officials of different stature, and its people are blurred. The same holds true for courts.<sup>311</sup> Thus, the purpose here is to demonstrate that courts do function in the 'everyday', even though they may not meet the expectations of temporal efficiency, namely the lengthy time taken - often amounting to years - to dispose.

### Nothing Happens in Everyday Cyclical Time

Writing on time in plot development in novels, Bakhtin comments that time without progression is commonly found in novels, like those by Flaubert. Time in such novels was without event, and therefore seemed static.<sup>312</sup> He adds: "It is a viscous and sticky time that drags itself slowly through space."<sup>313</sup> For Bakhtin, this time often served as ancillary time in novels or as time in contrast to other temporal segments that are more charged and energetic. The relationality of time is what provides a sense of time to readers. Here, Kafka's *The Trial* is particularly instructive, for in this novel time plays a central role in plot development, since time is both static and fluid. Time here lacks the chronological progression of time, and the fluidity of spaces disorients readers and effectively depicts a chaotic and confusing legal system. The arbitrariness and capriciousness of law that Kafka's protagonist Josef K is subjected to is evoked through the absence of spatio-temporal location. The only reference to time is made at the beginning and at the end of the trial, that is, when the case begins and closes. It is also what makes 'waiting' unpredictable and unbearable;

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<sup>311</sup> For more, see C. J. Fuller and Veronique Benei, eds., *The Everyday State and Society in Modern India* (London: C Hurst & Co Publishers Ltd, 2001); Akhil Gupta's early anthropological work on corruption challenges the public/private distinction, and he argues that the state is discursively constituted. See Akhil Gupta, "Blurred Boundaries: The Discourse of Corruption, the Culture of Politics, and the Imagined State," *American Ethnologist* 22, no. 2 (1995): 375-402; Emma Tarlo in her study of the Indian Emergency focused on sterilisation, slum resettlements, and the resourcefulness of citizens, challenging simplistic Emergency narratives. See Emma Tarlo, *Unsettling Memories: Narratives of the Emergency in Delhi* (Berkeley and Los Angeles: University of California Press, 2003).

<sup>312</sup> *The Dialogic Imagination: Four Essays* by M. M. Bakhtin, 247.

<sup>313</sup> *The Dialogic Imagination: Four Essays* by M. M. Bakhtin, 248.

we do not know how long Josef K has to wait, or how long he has already waited. Time is central to Kafka's plot development, since the story never truly progresses because it lacks what Bakhtin calls 'advancing time'. It is 'advancing time' that is the key to plot development and gives a sense of progression. *The Trial* decidedly lacks that, as Kafka erases time and space to suggest how the legal system overpowers Josef K's life. As readers, the erasure of time means we are not sure how to measure how much time has elapsed, since there is no relational reference available to us. It is this absence of time that makes the wait for Josef K and for the novel's readers unbearable and arbitrary.

It is here that Josef K's waiting differs from that of the women litigants in my study. The female litigants I studied initiated the trial, and had some insight into the relationality of time. They were aware of the passing of time based on chronological years, but also based on the metamorphoses they witnessed in themselves from 'victims to half lawyers' and the ongoing nature of time in their own private lives. For the women litigants I interviewed, it is the passage of time in court contrasted with the passage of time in their lives, that provides them with a relational measurement of time. It also provides them with private time over which they have some control, as opposed to the 'waiting time' that reveals asymmetrical and unequal power dynamics – the women waiting since they had no choice. And yet, I would argue, the everyday cyclical time in court where 'nothing happens' is critical to the progression of the case.

I argue that the feeling of 'nothing happens' has to be viewed relationally, where time spent waiting in court for cases to progress moves at a different pace to the time in women's lives, that is, their children growing up, the financial independence they acquire after the breakdown of a marriage, and the transformation they experience in themselves and their lives after filing a case. The change women experience in their personal lives after the breakdown or separation from their husband, stands in contrast to the case being stuck. It is the waiting time in court, in relation to the changing nature and pace of their private lives that further accentuates the feeling of 'nothing happens' in courts. The relationality of time is what provides women with a 'sense of time', by this I mean it is what gives their time meaning and structure. It includes an ability to make sense of time and to comprehend what can happen in time. A different conception of time and space is revealed when women narrate their self-transformations and compare them with their stagnating cases in court, revealing how



personal narratives move in a different time-space than their court cases.

‘To happen’ means to occur or take place. When the word ‘nothing’ precedes the verb it speaks of ‘dead’ time. Nothing, here implies not much of significance is taking place. In saying ‘nothing happens’, the female litigants articulated how they viewed their wait in temporal, spatial and situational terms. They were stuck in courts both spatio-temporally and situationally when their cases failed to progress. When they referred to the immobility of their cases, they were referring to the immobility of their own lives where the promise of independence and freedom that the Act supposedly guaranteed remained unfulfilled or delayed. Thus, their immobility was not merely spatial and temporal, but also situational when they found themselves stuck in court. In the temporal points between filing the case and relief being granted, cases were challenged, appealed, or moved to higher courts, but the temporal period was measured and perceived by the women as dead time, since they still had to keep returning to the courts and make appearances. This delayed their possibility to return to their everyday lives, or in some cases to starting working or studying. It is here that Bakhtin’s analysis of plot progressions and movement in Greek romance proves useful. Seeing ‘nothing happens’ in terms of Bakhtin’s chronotope sheds light on how the women studied perceived waiting, stasis and the progression of time.

In Greek romance Bakhtin writes it is the ‘suddenlys’ and ‘at just that moment’ that interrupt the normal progression of time. The time in between these plot turns, and twists is erased or condensed. Bakhtin describes ‘suddenlys’ and ‘at just that moment’ as “..this type of time, for this time usually has its origin and comes into its own in just those places where the normal, pragmatic and premeditated course of events is interrupted – and provides an opening for sheer chance, which has its own specific logic.”<sup>314</sup> As Bakhtin writes, without the “chance disjunctions” and “chance simultaneity” there would be “no plot at all and nothing to write a novel about”.<sup>315</sup> The ‘suddenlys’, writes Bakhtin, indicate a spatiotemporal change in the plot for the reader where ‘time segments intersect’. In the case of ‘nothing

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<sup>314</sup> *The Dialogic Imagination: Four Essays* by M. M. Bakhtin, 1982, <https://utpress.utexas.edu/books/bakdia>, 92.

<sup>315</sup> *The Dialogic Imagination: Four Essays* by M. M. Bakhtin, 92.

happens', time remains static and continues without any interruptions or random disjunctions of chance and simultaneity.

If we are to see the stasis the women refer to in 'nothing happens' through the lens of Bakhtin chronotope, the phrase is evacuated both of temporal and spatial change, since nothing changes or progresses in the story of the case. Although the women recall the changes in the trajectory of the case (the appeals, amendments, multiple applications) along the same lines as Bakhtin's 'earliers' and 'laters' that indicate the chain of events that follow one and another in the narrative realm, they do not carry the story forward or to its end. Thus, by 'nothing happens' the women do not refer to nothing taking place, but to 'nothing changing' and the continuance of the quotidian. In Bakhtin's adventure time, things happen to people outside of their own initiative. 'Nothing happens', on the other hand, indicates the absence of anything extraordinary happening in the normal course of the ordinary. For the women litigants the extraordinary is not merely getting relief but the case closing once and for all.

The term 'chronotope' thus serves as a useful analytical tool because unlike looking at space or time singly, the chronotope reveals how 'time thickens', 'takes on flesh' and shapes spaces, and how space becomes 'responsive and charged' and in turn shapes time and its dialogic effects. As Michael Holquist explains, an event is a 'dialogic unit', that is things happen only in relation to something else, and that is what gives us a perspective on change in time and space.<sup>316</sup> From the perspective of courts and analysing the perceptible feeling of 'nothing happens', the chronotope throws light on the many micro-chronotopes that exist in court time and serves as a tool to unpack this sense of 'nothing happens' in relation to other chronotopic events. As we will see, the women measured the time passed in recalling the itinerant journeys of their legal cases. This perception of time and its movement is correlated to the non-movement of the case, and the movement and change in their own lives. As I discuss in the next section, the women reflected on and discussed the transformations they had witnessed in themselves subsequent to coming before the court. This change in themselves stands in stark contrast to the case and the act of waiting which they viewed as a static act.

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<sup>316</sup>Michael Holquist, *Dialogism: Bakhtin and His World* (London; New York: Routledge, 2002), 113.

The perceptible feeling of ‘nothing happens’ is underpinned by the fabric of the city where, by contrast, a lot happens. The breathless pace of the city, and the transformations in the women’s lives underscore court time as a dead and wasteful time where nothing moves. By officially filing the case, the women litigants learn that certain responses are continually demanded of them, such as responding to petitions, appearing in court, collecting evidence, making counter-applications for unpaid monetary relief, producing documents, and so on. The Act empowers women litigants, but also takes control of their lives. As Sally Engle Merry in her ethnography on *Getting Even, Getting Justice* describes it, while litigants can feel empowered by the law, they also have to submit to the law.<sup>317</sup> After filing the case, the women realised that unlike they had previously thought, the act of coming before the law did not automatically make the case progress. Instead, the women litigants who filed their case lost control of their time and found themselves stuck in court. The loss of control the women experienced emerges from the expectation and anticipation that their act of filing a case should result in quick civil reliefs and justice.<sup>318</sup> It is precisely on account of the lack of ‘suddenlys’ and ‘at just that moment’ that the women failed to see how their case was progressing. Yet, when the women narrated the stories of their cases and measured time in the chronological and spatial journeys of the case, we see how the women who waited came to ‘measure’ time both through their own cases and through their own personal transformations.

Yet another register of time is the one stipulated in the Domestic Violence Act. The Act states that cases should be completed and relief should be granted within sixty days of the date of application. However, in practice, cases frequently exceed the stipulated time and take on an average three years until final relief is granted.<sup>319</sup> The case is completed when the final relief under the Act is granted. Final reliefs are granted after evidence is produced, and cross-examination and final arguments take place. By stipulating sixty

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<sup>317</sup> Merry, *Getting Justice and Getting Even*.

<sup>318</sup> The Act provides for various civil reliefs, including monetary relief, compensation, right to residence, custody, and protection orders. See Chapter Two for further details.

<sup>319</sup> When I state that on an average a case takes up to three years, this is not a statistical evaluation of the number of years. Instead, I rely on the number of years lawyers I interviewed stated. Yet again, in most cases the case is settled outside court as opposed to an order being granted by the lower court.

days as a period within which an application under the Act should be disposed of, the Domestic Violence Act establishes a linear segment of time starting from the date of filing an application and the case disposal. It is this same time-period of sixty days that the women referred to in interviews to draw my attention to the failure of the Act to grant final reliefs within the said period, and the number of years they had spent waiting. The speedy relief promised by the Act in comparison to other laws, further increased disappointment and failed to meet their expectations.<sup>320</sup> Yet, it is critical to consider that many women litigants had cases of divorce pending in Family Courts, or a criminal case under Section 498 of the IPC ongoing in other courts. This often meant that women had to visit many courts, and had a number of hearings going on at the same time. This further increased the waiting time. It is these simultaneous applications in other courts, mostly employed as delaying strategy by lawyers to tire all legal strategies and exhaust the respondents, that further lengthened the waiting time in courts. Although, most women referred to the Domestic Violence Act in their interviews when referring to the long delays, I suspect they also referred to the overall number of years and time they had spent in courts waiting for other petitions to close.

### **Static Case-Time versus Women's Rapid Transformations**

Meenakshi, a litigant I met in my third field-visit, was one of the litigants who waited for nearly seven years in court.<sup>321</sup> A woman in her late forties with two children, Meenakshi had filed a case under the Domestic Violence Act in 2008. With an ironic smile on her face, Meenakshi told me: "I filed the case in the Andheri court, and I received an interim order with maintenance and residence seven months later. After that, my husband appealed against the verdict in the Sessions Court,<sup>322</sup> where the case jumped from courtroom 18 to 22."<sup>323</sup> In courtroom 22, the lady judge kept giving dates. Then in

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<sup>320</sup> Lawyers preferred to apply the Domestic Violence Act, largely owing to the fact that the initial interim reliefs are granted usually within three months of filing. The provision for interim relief guaranteed that women would receive at least an interim relief quickly.

<sup>321</sup> *Field Notes from August, 2015.*

<sup>322</sup> The Sessions Court is the higher court where lower court verdicts are appealed.

<sup>323</sup> The court numbers have been changed in order to maintain the confidentiality of the judges and litigants concerned.

courtroom 21 the judge changed. The new judge sent me to the mediator where we had three sittings. Before settlement the case was before the sixth judge.” Her case, like many others, had taken the usual twists and turns of appeals, delays, changed courtrooms and transferred judges. The case was finally settled outside court with the help of lawyers and the final relief that she received was not ‘granted by the court’ but negotiated by the respective parties. The parties drew up the settlement terms that included a lump sum payment for Meenakshi and her children, and the right to reside in a home owned by her husband. In addition to the case under the Domestic Violence Act, she also had a divorce petition in the Family Court. The settlement terms were drawn up for both cases and submitted to the respective courts.

In recounting and recalling the legal trajectory her case had taken, Meenakshi had learnt how to measure time in the legal trajectory the case had taken. The length of the case was not merely measured in terms of linear chronological years spent waiting in court since the date of filing, but in the legal journey of multiple applications, appeals, interim relief granted or rejected, the movement of case from lower courts to higher, the adjournments, and the constant back and forth between courts and courtrooms. The legal journey of the case inside and outside courts was used as a measurement device. Meenakshi measured the time-period of the case spatio-temporally, the courtrooms and courts it moved in and out of, the multiple revisions and appeals, and the legal length it travelled. The legal length of the case becomes a measure of time ‘past,’ and of time spent ‘waiting’ where ‘nothing really happens’. Meenakshi measured the duration not in years alone, but by the number of times the case was transferred, the interim and final orders received, and the appeals, adjournments, and circuitous route the case took from lower court to higher court, and back again in the lower court. The length of waiting is articulated in the terminology of law’s administrative functioning, namely in terms of delays, dates, adjournments, and appeals. The primary way litigants understand movement of time is through movement and closure of their cases. The women I studied measured their waiting by recalling dates with precision, the number of court visits, and by marking the stages of their cases (arguments, hearings and the filing of evidence).

Cases rarely progress in a chronologically linear fashion. The legal procedure permits cases to go back and forth between courts. They can move from lower courts to higher courts and then be sent back to lower courts, and appeals to verdicts are challenged, restored,

revised or amended. Cases generally go back and forth, or forward, backward and around. A verdict previously given can be amended or revised based on an appeal. In Meenakshi's case, the verdict she was given was appealed against by her husband in a higher court. As the verdict was being appealed against, the implementation of the verdict given by the lower court was 'stayed'. The staying of an order meant that the court would not compel its implementation until the appeal was completed or decided upon. This appealing of a past verdict in the future, and the constant back and forth in temporality challenges the linear progressive movement of a case that women expect from the law. However, the right to appeal or challenge a verdict is crucial to the democratic dispensing of justice. In contrast to the calendrical movement of time in which courts function, the case verdict defies temporal linearity by going back in time when it is appealed against. The procedural language of the law, such as the term 'staying', itself suggests a lack of movement.

The multiple spaces and temporal frames where timespaces move ficklely back and forth and spatiotemporal boundaries blur, causes spatiotemporal instability. Hence, the only way women can come to measure time is through the constant movement of their cases. This measuring of time by recalling case-movements itself challenges the idea of 'nothing happens' in courts. This measuring of case-time is relational to the time and its advancements in their own lives. The women I interviewed often spoke of how they had changed over the last few years. This transformation took many forms, involving changes in themselves and changes in their lives since the filing of the case. Changes were brought about both by the use of the law, and/or changes relating to moving from a small town into a big city like Mumbai and getting married. In the case of Meenakshi, she began working for the first time in her life and was in charge of her own life. She now had more freedom than ever before and she spoke about her new-found independence with great pride in herself, and with faith in her ability to fight a court case by herself.

Like Meenakshi, Swagata, who I introduced in Chapter Four, is another litigant who had a case ongoing for over three years against her parents-in-law.<sup>324</sup> Time and again she referred to changes in herself: "I wasn't earlier like this at all," she said as we sat in her office. "I was meek, soft, eager to please, and scared to express myself. I came from a small town." She described herself as a small-town girl hailing

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<sup>324</sup> *Field Notes August, 2015.*

from Kolkata and attributed the changes to her move to Mumbai after her marriage. Prior to her marriage she had had a sheltered upbringing, since in the absence of her parents her brother had sheltered her from the 'real' world. In her own words, the problems with her husband started immediately after her marriage, such as interference from his parents and their unhappiness at her giving birth to a girl. After her husband became paralysed, she had filed the case against her in-laws, who were harassing her and wanted to dispossess her of the property. Filing of the case and coming before the law changed her. She attributed the change to how she had learnt how to speak up for herself. "I couldn't speak before. I was scared," she said observantly.

This transformation aided by law was reiterated by the lawyers I followed. In one of my conversations with Tara, a lawyer, I asked what had transpired in one of her litigants' cases. I had recently met Tara's client Simran and had learnt the various details of her case and how the settlement had come about. Tara recounted the journey the case had taken, and how Simran had been transformed in the process of 'fighting for justice' from someone who was previously 'scared'. "Now look at her!" exclaimed Tara. "She is a bold cat." Simran also articulated her own transformation by describing herself as a simple middle-class girl who wanted her marriage to work, to someone who had the ability to fight for justice.

This transformation takes place between two temporal points: the first is coming before the law and the second is the closure of the case. Although the time between these two temporal points appears static to the women litigants I met, in fact their personal transformations were a result of both going to court and the passage of time. The change women recount is not limited to the changes in themselves alone, but in how in the period of this waiting their lives and their children's lives had progressed, establishing landmarks of chronological growth. While the women went to court to bring about certain changes in their lives, the law appears to have also changed them in the process. In Greek romance, the temporal hiatus that Bakhtin notes leaves no trace in the heroes' lives. In the case of the women litigants, the temporal hiatus aids their changes and transformations, even though there are no significant twists and turns in the narrative as the cases remain stuck. For the purpose of my informants, this legal consciousness also served as a reminder of how their cases did not transform. With my informants, their cases had lacked the 'suddenly' and 'at just that moment' that marked

development. In fact, the changes in their personal lives accentuated the inactivity of their court time

## Conclusion

Waiting in courts and outside courts is part of daily court life for both lawyers and litigants alike. From the time women file their case in court, their time is governed by the court. The long wait and delay that lawyers and women litigants frequently complain about also acts as an efficient mediator. The waiting and sitting impose a 'heavy strain'. Yet, waiting is not pointless. Waiting, if anything is an act of hope.<sup>325</sup> In a discussion between the businessman and Josef K in Kafka's *The Trial*, a businessman whose case is ongoing in court observes that waiting is not pointless, instead he learns how to negotiate the waiting time by hiring five different lawyers to work simultaneously on his case. Below is a dialogue between the businessman and Josef K.

"Waiting is not pointless," said the businessman, "it's only pointless if you try and interfere yourself. I told you just now I've got five lawyers besides this one. You might think – I thought it myself at first – you might think I could leave the whole thing entirely up to them now. That would be entirely wrong. I can leave it up to them less than when I had just the one. Maybe you don't understand that, do you?" "No," said K., and to slow the businessman down, who had been speaking too fast, he laid his hand on the businessman's to reassure him, "but I'd like just to ask you to speak a little more slowly, these are many very important things for me, and I can't follow exactly what you're saying." "You're quite right to remind me of that," said the businessman, "you're new to all this, a junior. Your trial is six months old, isn't it? Yes, I've heard about it. Such a new case! But I've already thought all these things through countless times, to me they're the most obvious things in the world." "You must be glad your trial has already progressed so far, are you?" asked K., he did not wish to ask directly how the businessman's affairs stood, but received no clear answer anyway. "Yes, I've been working at my trial for five years now," said the businessman as his head sank, "that's no small achievement."

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<sup>325</sup> Adam Reed, "Hope on Remand," *Journal of the Royal Anthropological Institute* 17, no. 3 (2011): 527–544.



Like Josef K, the businessman's trial does not proceed, except for some hearings and the collecting of documents. What the businessman tries to achieve is 'tangible progress' where things move to a conclusion, but that is rare in trials like this he admits. Getting a final date for a trial he explains is difficult. It is this tangible progress that moves chronologically into the future that the women studied refer to, a conclusion to the case. Yet, without the spatio-temporal segment of waiting in courts, negotiations and progress do not take place. The long delay affords women an opportunity to negotiate a settlement out of court where otherwise nothing would have happened. In fact, the 'delay tactics' adopted by lawyers by adjourning or postponing a case or by not turning up are well-known strategies to manage cases. If a magistrate is unlikely to give a favourable verdict, then delaying a case until the magistrate is transferred is a common ploy. Nidhi, one of my lawyer informants, confessed that delaying tactics are usually employed after an interim order is passed, and the woman has received some relief. 'Delay' was a legal strategy she herself employed; it was something of a 'public secret', rarely articulated but widely known.

It would be inaccurate to view litigants in the Foucauldian sense as merely passive subjects whose time is manipulated and governed to create docile subjects. The daily engagement and governing of time by courts is not one-sided. The effects of delay reap benefits, even for those without power. To take the example of Zarna, her case was finally settled after her cross-examination started. Hina was pleased with the outcome, reiterating that the settlement was better than what she would have received from court. The settlement was an by-product of waiting. The delay in cases often results in an efficient settlement outside of court. Time is an efficient negotiator that makes a compromise between parties more palatable. A settlement that may have been less acceptable to parties earlier becomes more palatable with time. The settlement, as many of my lawyer informants suggested, may often be more in congruence with what parties seek than what the court may have granted.

Magistrates actively encourage 'settling' cases outside the formal procedures of the trial. The settlement between parties takes place anytime during the trial, but is usually encouraged by the magistrates and lawyers after the interim relief has been granted and before final arguments and the production of evidence takes place - both very time-consuming stages. Courts often actively discourage prolongation of cases, and insist on them being 'settled'. 'Settling' means when the parties concerned agree to the terms and conditions of a compromise, and in the court cases I followed it meant that the

female litigant would agree to close or withdraw the case from court. After a compromise is made, in cases like these typically the court closes the case file with a note indicating that the terms of the compromise are attached to the file.

In a classic oft-quoted line from a 1990s Hindi film titled *Damini* (thunder), the movie climax ends with a disillusioned male lawyer breaking into a rhetorical speech on *insaaf* (justice) and *tareeq* (a legal postponement, literally ‘a date’) that encapsulates the decay of the legal system.<sup>326</sup> In courtrooms bursting at the seams: “All we have is date after date, date after date ... but not justice.” The movie, which is a story of one woman and a lawyer’s fight to get justice for a raped woman, revolves around how lawyers manipulate the legal system to delay cases and circumvent justice by taking later dates. It is a line that one of the women litigants quoted from the movie, “I didn’t get anything, except a date” (“*Kuch nahi mila, sirf tareeq hi mili hai*”), she said with a laugh. Thus, suggesting the similarities between her case and the ‘real’ court, and what happens in the fictional court in the movie. The movie though ends with a positive verdict that reinforces the faith of the audience in justice, as manipulative lawyers and a corrupt legal system are defeated.

Yet, unlike the movie, the waiting for a *tareeq* is not a powerless position in courts for women who survive the system and the *tareeq*. Litigation, if anything, as Tara summed it up, is about who ‘breaks first’. The breaking point is caused by the long wait. It serves to encourage and provoke settlements between parties where otherwise nothing might have happened. Even in Meenakshi’s case, her complaint that “all the judge wants to give is a date” and the accompanying frustration played out in her favour at the time of negotiations with her husband. Not only did the settlement result in a favourable final outcome, she also managed to get her husband to agree to a divorce by mutual consent that was being contested in the Family Court. Despite her disappointment with the court, she received an interim relief of the sum she had demanded. Yet, the time spent waiting felt static and unmoving in respect to her case. Waiting characterises women’s entrapment in court where although time moves ahead, their cases are stuck in time and the everyday loops of bureaucratic court functioning. It is also important to consider that the women I interviewed for the study are women who socially and economically survived the wait.

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<sup>326</sup> *Damini*. 1993. Directed by Rajkumar Santoshi.

The modes of waiting in court have their own temporality that stand in contrast with the linear temporality of the textual law and the court time. Yet, it is the interaction between these different temporalities that produces the perception of ‘nothing happens’ in women as the many temporalities fail to coalesce and instead cause a seismic shift. The simultaneity of the ordinary court visits is against which the extraordinary happens. The everyday, much like in literary novels, is what you do not see, though it does move the story forward. At the same time, most women I interviewed had multiple cases going on either in the Family Court where divorce cases were pending or under Section 498A, where cases in criminal courts were ongoing. The multiplicity of cases in different courts that proceeded at different stages further added to the delay.

In this chapter, I have demonstrated how it is the dialogic relation of various spatio-temporalities that influence women’s experience of time. The neat calendric movement of linear time, to draw on Bakhtin’s idea of chronotope, is not only arranged sequentially in literature but also functions in institutions like courts and in our day-to-day living. The cases I spoke about did in fact move forward, though not in the same spatiotemporal pace women expected it to. The delays that take place in court, the adjournments, are often instances of litigation strategy on both sides. What we also have to consider is that this temporality of court time, and the movement of time also has to be contextualised within the city of Mumbai, where time moves briskly. The constant refrain of the city’s residents about how no one has time in the city, and how time moves without noticing it, influences how these temporalities overlap and accentuate their perception of time. In courts, on the other hand, experience of time is static as day after day where nothing appears to happen. Although, something does happen.

## Chapter Six

### Conclusion

In January 2014 when I visited the lower court for the first time, the objective was to study what happens to an internationally modelled law in courtrooms, and how does the wide definition of domestic violence and ascribing it a legal name alter how we talk about violence in intimate relationships. My focus in many ways changed, and yet it retained some of the original inquiries, that is, how law is transformed in the day-to-day dealings, and the essential variance between what law stipulates and what it becomes. What changed in my study is the focus on what does the ‘everyday’ do to law, and what the everyday of law is like. This attention on the micro and habitual of law changed some of the questions I started with, but not essentially the kind of conversations and questions I posed to litigants and lawyers. The focus of my research changed as undertaking a study where for the first few months I sat through all court proceedings in the lower court, and witnessed a handful of oral arguments, made me rephrase my initial inquiries. As a researcher waiting and taking notes of the ‘happenings’ and banal court proceedings, what happened in court was not open to immediate insights. It was the waiting, talking, listening and attending to what women litigants said and did not say, and what women litigants did, sometimes in contradiction to what they said, that provided the insights in this study.

As Ingold observes, writing on anthropological knowledge production, “waiting upon things is precisely what it means to attend to them”.<sup>327</sup> Participant observation, in this sense, is not underwritten with ‘objective’ insights into the workings of the law, nor do I claim to present authorised knowledge based on the data I collected, instead it is an insight into what<sup>and</sup> how I know, as well as the insights and knowledge I gained from talking to the women litigants, to lawyers about law, and from witnessing the everyday court proceedings.

Participant observation, as Ingold has argued, is more than a research method, it is an ontological acknowledgement of “what we

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<sup>327</sup> Tim Ingold, “That’s Enough about Ethnography!,” *HAU: Journal of Ethnographic Theory* 4, no. 1 (17 June 2014): 383–95, <https://doi.org/10.14318/hau4.1.021>.

are and what we know”.<sup>328</sup> This recording, listing and cataloguing of the ‘everyday’ in court also reinforced the characteristic response in my field notes that ‘nothing happened’. However, my notes recorded at length what happened in court day after day. This characteristic response that ‘nothing happens’, as I learnt, was critical to attend to. This insight may not have been achieved if I had focused on appellate court judgements. My initial interest in examining what happens to the Domestic Violence Act in courts was not a normative inquiry into how the Act was being implemented. Instead, it was in situating myself in the lower court where domestic violence cases were being adjudicated that everyday conditions, problems and possibilities of the law were revealed.

I hope this study has demonstrated this disconnect between what the law is, and what women litigants seek and perceive it to be. Much of these initial expectations from the law, and what is sought from the Act emanates from stipulations and guarantees under the Domestic Violence Act. To give just one example, the disappointment with delay in courts stems from the stipulation that final relief may be granted within sixty days from the date of filing the application, a time-frame that courts fail to meet. At the core of this, I argue, is a disconnect between the many meanings of what accessing law means. Does it mean merely physical access to courts, or does it imply relief granted by inducing settlement? Does accessing the law mean being granted relief in the stipulated time? Does a hearing in court suggest listening, or can written submissions qualify as being heard, even if women are not afforded the opportunity to articulate their grievances in court? I have attempted in this thesis to show what the law is and what accessibility to the law means in terms of day-to-day. What this accessibility means in law and in policy research, I argue, is vastly different from what accessibility means to litigants. If it was not for participant observation, my attention would not have been drawn to how the everyday is critical to this accessibility to the law and what it means. It is this everyday experience of the Act that essentially transforms it, so much so that, to borrow Baxi’s words, the Act bears little resemblance to itself.<sup>329</sup>

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<sup>328</sup> Susan MacDougall, “Enough about Ethnography: An Interview with Tim Ingold,” *Cultural Anthropology*, <https://culanth.org/fieldsights/841-enough-about-ethnography-an-interview-with-tim-ingold>.

<sup>329</sup> Pratiksha Baxi makes a similar argument in her monograph on rape trials. For more, see Baxi, *Public Secrets of Law*.

In this concluding chapter, I will rehearse some of the key arguments and themes I examine in this thesis. I start with why does the everyday matter, and from there on, I proceed to reprise some of the main themes that this thesis has addressed.

### **Why does the everyday matter?**

In this thesis, I have closely attended to this feeling of what ‘nothing happens’ means in the everyday context by employing Maurice Blanchot’s analysis on the everyday. In discussing the everyday, Blanchot specifically refers to the public street, in the context of a person using public spaces where seemingly a lot happens. Despite the rather obvious differences between the court and the street, for court users the day-to-day functioning of a court is similar to the street since in both a lot happens but little that is considered worthy or eventful enough to stand out. The street and the court thus have both obvious differences and latent similarities. Yet, for Blanchot it is not the nullity of the everyday life that gives meaning to the ‘not null’ moment; instead, it is in the quotidian that the possibilities of what can happen are revealed.<sup>330</sup> As Blanchot writes, the elusive quality of the everyday is not easy to pin down, neither is it amenable to definitions and it lacks beginnings and endings. The everyday by its very nature is alienating.<sup>331</sup> This, as I argue, is also the essence of everyday law, where despite being in court and seemingly ‘before the law’, it escapes and remains beyond our grasp. It is this essential nature of the everyday that forms the core of all the chapters in this thesis, where law, though accessible, remains unreachable and alienating. From the perspective of law, the seemingly apparent and taken for granted meanings of rights and guarantees are unsettled. So, what is a right to fair trial? Or, what does a hearing entail, or is the meaning of ‘reasonable time’ different for institutions as opposed to litigants. All these aspects are considered in this thesis.

In my study I have examined the ‘right to hearing’ and what that means and what it translates into. The examination of the multiple ‘hearings’ explores the exact nature of what a hearing in law is, what it translates into in the everyday, and what its significance in the day-to-day activity of the court is. The sunwayi (hearing) that the women litigants in my study referred to denoted a different kind of

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<sup>330</sup> Blanchot and Hanson, “Everyday Speech.”

<sup>331</sup> Blanchot and Hanson, 13.

hearing than the one intended by law, namely the right to a fair trial. Hearing is, as I argue, an embodied experience.

This perceptible feeling of nothing happens since nothing registers in the everyday of court visits, is also as I argue how silence surrounding the nature of violence suffered by women is traded for civil reliefs. ‘Nothing happens’ is thus characteristic of the ‘silencing’ of the nature of violence that women coming before the court have suffered. Interim and final arguments, in the lower court I studied, are centred around the relief sought, but they fail to represent and catalogue the kind of violence that the women have suffered. Rarely during my fieldwork in the lower court did I witness arguments that appealed to the court or drew the attention of the Magistrate to the kind of violence a claimant had suffered. If the violence suffered was emphasised, it was largely to justify separation or combat the frequent request of the man to live with the woman again, and to make a compromise. This silencing of violence, with a view to gaining civil reliefs, is the direct opposite of the primary objective for which a law addressing and naming ‘domestic violence’ was originally enacted.

As claiming reliefs becomes significant, the violence that women have suffered is no longer represented by means of oral arguments. Lawyers are concerned with ensuring that their clients are granted reliefs, but the verbalising of ‘violence’ in courtrooms does not necessarily improve their chances. The silencing of violence also means that the law ‘looks away’ and does not attend to the kind of violence women have suffered. Moreover, despite bringing cases of domestic violence to court, monetary orders and residence orders are frequently violated by male partners without any consequences. In Chapter Five, I wrote about Meenakshi, who in describing her court journey articulated that her husband’s violence continued after filing the case. In addition, his violation of the residence and protection order granted by the court did had no consequences, even though the Act stipulates that a breach of a protection order or an interim protection order is an offence under the Act.<sup>332</sup>

## Waiting

In this thesis I have paid attention to the waiting experiences women describe. How women wait, and how they deal with constant delays,

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<sup>332</sup> Section 31 of the Domestic Violence Act stipulates that a breach of a protection order or an interim protection order by the respondent is an offence under the Act, and is either punishable with imprisonment for up to a year or with a fine up to twenty thousand rupees, or with both.

adjournments and the uncertainty of being in courts reveals where the power resides in the practice of law, and what the effects of that power are. What does judicial delay feel like, and what does it do? I examine 'waiting' and how women litigants and lawyers deal with 'judicial delay' in courts, and how this correlates to the hierarchical nature of accessing courts, where people who do not wait are people whose time is supposedly of value as opposed to those who wait. This demonstrates the effects of power and knowledge, as the powerful do not wait. Along similar lines as Pratiksha Baxi, I argue that understanding this seemingly commonplace practice in the lower court is important in the project of law reform. Thus, I catalogue and analyse the uneventful waiting of women litigants. In research on judicial delay, no attention has been paid to waiting and how this waiting is negotiated, or how it influences women's perception of law. Judicial delay essentially reveals what law is and what law does.

As I have demonstrated, day-to-day visits to courts where cases are adjourned to a later date represent spatio-temporal sites where power is negotiated. It is here that what I call 'formalised settlements' are compelled and cajoled from the litigants by judges and lawyers alike. It is also the day-to-day social and economic factors of a case that drags on that reign in the will of women to continue with a case and reinforce the ineffectiveness of coming before the court. Everyday socio-economic factors have a bearing on how the Act responds to what women seek in court. Whether women are heard in courts or not is also a question of what kind of lawyer they can afford. Also, access to courts is not merely contingent on whether women have the financial ability, it is also whether they have the social, cultural and economic capacity to wait in courts. Not all women wait in the same way, and not all the conditions and circumstances of their waiting are the same.

Thus, I argue that the everyday must be taken into consideration when policy debates on judicial reform and judicial delay are made. The quotidian and mundane aspects of law provide insights into how courts function in daily practice, and instead of finding solutions to judicial delay in digitisation or increasing the number of judges, attention to what takes place in courts compels us to take a more nuanced approach when dealing with delay in court cases. This delay is common even in alternative dispute resolution forums, as they are besieged by similar problems as formal courts, and their effectiveness is arguable. The quality of 'hearing' and resolving conflicts in informal dispute resolution tribunals has been questioned by scholars. Jayanth Krishnan and Marc Galanter describe informal tribunals as "debased informalism" that continue to perpetuate the



same problems that affect the formal courts in India. Suggestions have been made to decongest courts and create an efficient justice mechanism focused on speedy trials by means of informal courts. However, in practice this ‘speedy’ justice system would exclude rural citizens without resolving the core problem, namely an excessively litigious government whose cases crowd the already congested courts.<sup>333</sup> The presumption that access to justice can be achieved by instilling temporal efficiency, reducing litigation costs, and improving speediness fails to interrogate what ‘access’ or ‘justice’ mean. The settling of cases inside and outside of formal courts is illustrative of what Laura Nader has called “trading justice for harmony”, where the concern is not ‘justice’ but eliminating what are considered ‘garbage cases’ in court.<sup>334</sup> This is symptomatic of how the court responds to backlogged cases by coercing mediation between parties and hence ‘silencing disputes’, instead of reaching a solution via an adversarial process.<sup>335</sup> The long-drawn-out court cases, along with a complicated and circuitous legal system, and the inability of the lower courts to discipline lawyers who employ delaying tactics, adds to inaccessibility.<sup>336</sup>

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<sup>333</sup> For more, see Marc Galanter & Jayanth K. Krishnan, “Debased Informalism: Lok Adalats and Legal Rights in Modern India,” in *Beyond Common Knowledge: Empirical Approaches to the Rule of Law*, eds. Erik G. Jensen & Thomas C. Heller, (Stanford University Press, 2003), 96-141.

<sup>334</sup> Laura Nader, “From Legal Process to Mind Processing,” *Family Court Review* 30, no. 4 (1 October 1992): 468–73, <https://doi.org/10.1111/j.174-1617.1992.tb00273.x>.

<sup>335</sup> For more, see Nandita Bhatla and Anuradha Rajan, “Private Concerns in Public Discourse: Women-Initiated Community Responses to Domestic Violence,” *Economic and Political Weekly* 38, no. 17 (2003): 1658–64; Malika Basu, “Solution Exchange for the Gender Community Consolidated Reply: Nyaya Samitis for Dispensing Gender Justice – Experiences, Advice,” 03 January, 2011, <ftp://ftp.solutionexchange-un.net.in/public/gen/cr/cr-se-gen-20071001.pdf>. Shalini Grover, *Marriage, Love, Caste, and Kinship Support: Lived Experiences of the Urban Poor in India* (Social Science Press, 2011).

<sup>336</sup> The growing case backlog with procedural laws that encourage and allow endless interlocutory appeals, including the inability of lower trial courts to reign in lawyers using delaying tactics, further adds to the case backlog. For more, see Jayanth Krishnan, “The Rights of the New Untouchables: A Constitutional Analysis of HIV Jurisprudence in India,” *Human Rights Quarterly* 25, no. 3 (2003): 791–819.

As the preceding chapters show, the everyday is not the same for all. The everyday in court is busy, and full of activity for lawyers as time is scarce and they have to constantly juggle multiple matters in different courts. When ‘nothing happens’ then is a question for whom does ‘nothing happen’; lawyers for one do not describe their visits to courts in these terms. Lawyers are cognizant of the power of the everyday and how the everyday is key to negotiations and settlements in courts. This power that the everyday yields on women’s lives when setting later dates compels and enforces ‘settlements’. When Blanchot asks for whom nothing happens, he is referring to this intersubjective nature of the everyday.

### **Articulating violence in the everyday**

The discourse on misuse of the Act surfaces in conversations with lawyers and litigants alike. Such discourse often alters how facts are constituted and how narratives of violence are framed when seeking relief in courts. I argue that the challenge of straddling the contradictory positions of being a victim and a witness to their own violence exposes women’s testimonies to constant doubt. The everyday creeps in the way in which violence is spoken about. The articulation of violence in the language of ‘one-slap’ cases, for example, normalises ‘everyday’ violence as not worthy of reporting and cataloguing, and therefore not worthy of coming to court for. As this everyday kind of violence is often considered banal, it can escape notice or be thought of as the kind of violence that does not deserve attention. It is also the kind of violence that might not be placed on evidentiary record, such as medical bill receipts or prescription for burns or injury, or brutal violence that needs medical intervention, or violence that deserves police intervention. I particularly look at the discourse of misuse, and how women grapple with this constant doubt about and accusation of misuse of the Act. It is, as feminist lawyers have argued, the essential ‘use’ of the law by women that is termed ‘misuse’.

This doubt is implicated in the ‘legal sensing’ lawyers refer to in identifying ‘real’ victims. I explore the implicated nature of legal sensing that lawyers refer to, and how this legal sensing is aligned with legal categories and definitions stipulated under the Domestic Violence Act, where claims of ‘brutal violence’ resonate with the ‘aggrieved person’ category under the Act, but also a particular sensing body of the lawyer. This accessibility to the law, and meeting evidentiary requirements place the burden on how facts are constituted, and how narratives of violence are framed to appeal to legal normativity of what counts as violence.

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In this thesis, I have analysed the ‘everyday’ and the law in light of the everyday, as it is key to the questions and inquiries I have pursued in my study. This focus on the everyday has been both an ontological and a methodological commitment to the everyday as integral to our lives and to the accessibility of law. In the absence of accessibility, new laws and enactments will have no effect. Other than physical, economic, linguistic and timely access, accessibility is also when claims of violence are taken seriously and foregrounded in court arguments, as opposed to the Domestic Violence Act merely serving as a relief-claiming mechanism. The objective of the law is also to alter the conversations on violence, and the normalisation of violence in the domestic space. Courtrooms where accusations of women misusing the law and questioning claims of violence are commonplace, undermine violence and categorise some violence as worthy of legal action and others as ‘false’ or misusing the law. Accessibility in the case of women claiming violence in intimate relationships also means a recognition of a wrongdoing. To take the example of Preeti, in seeking a landmark judgement in her case, she was claiming recognition of the violence committed against her (see Chapter Five). This accessibility to law requires that debates on violence and courtroom talk take cognizance of the violence suffered, as opposed to the current emphasis on disposing of cases by settlement.

The question of settlement and disposal of cases so far has focused on court backlogs as the main reason to push for settlements. The lawyers I spoke to, on the other hand, argued that settlements often result in better monetary relief, and save litigants’ time and money. So, for instance, Hina argued that settling outside court is beneficial to all parties, reasoning that: “I charge a lump sum amount for a case. This means that in order to sustain my practice I have to take more clients. Also, the case drags on and does not benefit the woman. Settlement is the best thing.”<sup>337</sup> Lawyers that charge for each hearing may have a different approach, she argued, since each hearing is beneficial to them. Thus, for lawyers and courts ‘settling matters’ is beneficial in terms of time. When the main focus is on civil relief, questions on violence are silenced.

Of the eight women litigants I closely followed, Simran, Zarna and Meenakshi all had their cases ‘settled’ by August 2015. In all cases, several attempts were made to settle the case prior to the final arguments and the cross-examination of the parties. In Zarna’s case, for instance, her husband finally agreed to the lumpsum monetary

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<sup>337</sup> *Field Notes from September, 2014.*

payment and compensation amount she sought after the cross-examination took place. Similarly, Meenakshi and Simran both received the monetary relief they sought under the Act. In Meenakshi's case, she was granted the right to live in the shared household with her children and monetary relief for both children in her custody, while the husband was forced to vacate the house. Owing to the ongoing case and the number of times Meenakshi's husband had to attend court for the case and ask for leave of absence from his place of work, her husband had lost his job, and had been forced to move to another city for work. Farzana's case was close to a settlement, Hina intimated to me, articulating with her usual confidence 'ho jayega' (it will happen). It was only Preeti who received a favourable court verdict in record time. In Swagata's case the matter had not progressed much since we last met in December 2014. Her cross-examination was still pending, largely because her parents-in-law had deep enough pockets to appeal the interim relief she had been granted by the lower court, and continue with the case. Nidhi was convinced the matter would go to the High Court. Likewise, for Sameera, whose case was 'stuck', her husband had failed to comply with the court monetary orders without any consequences or had not even provided for their underage son, despite many demands for payment of arrears. When I met Sameera in August 2015, she was still living with her brother and studying in order to financially support herself and provide for her five-year-old son. Sharon, I was informed, was close to receiving an order. Flavia Agnes, a lawyer working on women's rights has argued that the Domestic Violence Act has largely failed women owing to the lack of implementation and the mistake of locating its jurisdiction in magistrates' courts (as opposed to Family Courts), where magistrates lack sensitivity and fail to understand the urgency of protection orders and have little experience of dealing with civil claims in family matters. Thus, 'settlements' where women's consent is a prerequisite for the settlement are disregarded or given little consideration.<sup>338</sup>

Hence, for many women litigants, the only way 'something happened' was through settlements. Settlement was a way out of the drudgery of long-drawn-out trials for both judges and litigants. The long and interrupted process of trials, where women typically spent an average of three years in courts made an interim relief granted in their

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<sup>338</sup> For more, see Flavia Agnes and Audrey D'Mello, "Protection of Women from the Domestic Violence," *Economic and Political Weekly* 50, no. 44 (2015).

favourable. After spending more than two years in court, an exit from court by 'settling' was a better alternative, as it was both temporally and economically efficient. But as Basu writes in her monograph on mediation, settlements fail to address the issue of violence. Under the Domestic Violence Act the focus is on reliefs, not on adjudicating violence, despite the fact that it is the first law that provides a broad and comprehensive definition of domestic violence. The settlements that women are often forced to make owing to economic reasons and temporal delays is contrary to the expectations with which women file claims under the law. Moreover, the nature of 'settling' and compromise defeats the intent of the law, where women often have to concede to terms that may be inequitable, or contrary to what they seek from the Act. Compromise, as it is generally called, obliterates any sense of empowerment that seeking relief under the law may have achieved. Basu writes that in Family Courts, mediation erases the reality of violence and anger in violence cases. This was evident in many cases where one party refuses to settle or finds the terms of settlements in contradiction to the rights under the Act.

I often heard Magistrates and lawyers persuading litigants to 'settle', with reassurances like: "Truth will prevail in the higher court" or "For how long will you fight? Leave something for the next life," Tara often cajoled her clients. Yet, settling, although a compromise, makes 'justice' more accessible by reducing the length that cases drag on and by providing relief to parties. The Domestic Violence Act promised easy access to the law, with multiple stakeholders and an easy to complete form that iterates violence only have to be checked in a tick box for the kind of violence and nature of relief that is sought. Access to courts, though, is far more complicated. Does access imply an unmediated lawyer-free access to courts, or a law that promises quick relief? Or does it mean an opportunity to argue your own case and air your grievances in 'plain language'? Access to justice, as women litigants have discovered, often means negotiating under the shadow of law, that is, where the law becomes a site of contestation under which a compromise is struck. The compromise may be far removed from the law's original intent. Scholars like Basu have argued that the law reforms lobbied by feminists provide little guarantee that the justice they envisioned will be achieved in courts.<sup>339</sup>

The focus on judicial reform needs to pay heed not only to the completion of cases, but to how women are forced to wait and how they endure this waiting. In practice, the conditions of waiting, such

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<sup>339</sup> Basu, "Judges of Normality."

as the lack of toilets or lack of access to resting places for women and children who travel long distances to get to court, are often gruelling. The lack of an affordable or a subsidised canteen is another issue. On the face of it, these appear to be merely infrastructural changes, but they deny equal space to litigants in courts. The issuing of a date for cases similarly takes into consideration what is amenable to the court and lawyers, while working women who cannot always come to court on account of their work are often humiliated with remarks such as, “You should have thought about this before filing the case.” Such treatment reinforces the undesirability and shame associated with bringing families to court.

In this thesis I have attended to questions relating to accessibility, and what accessibility means in law means in the everyday context in order to respond to questions that were raised in my fieldwork. Hence I have addressed issues concerning delay and the nature and conditions of a hearing and of waiting. More specifically, my analysis of legislative and judicial reform takes into consideration what court users say and think, as opposed to paying sole attention to doctrinal law and appellate judgements. The objective of conducting a participant observation study of the law, and its adjudicatory site was to pay attention to, and to an extent respond to, what women litigants and lawyers say and do.<sup>340</sup> Equally, it was to observe and lend attention to what they do not say, and do not do.

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<sup>340</sup> Tim Ingold, “Anthropology Contra Ethnography, ” *HAU: Journal of Ethnographic Theory* 7, no. 1 (11 June 2017): 21–26, <https://doi.org/10.14318/hau7.1.005>.

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